TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 241.

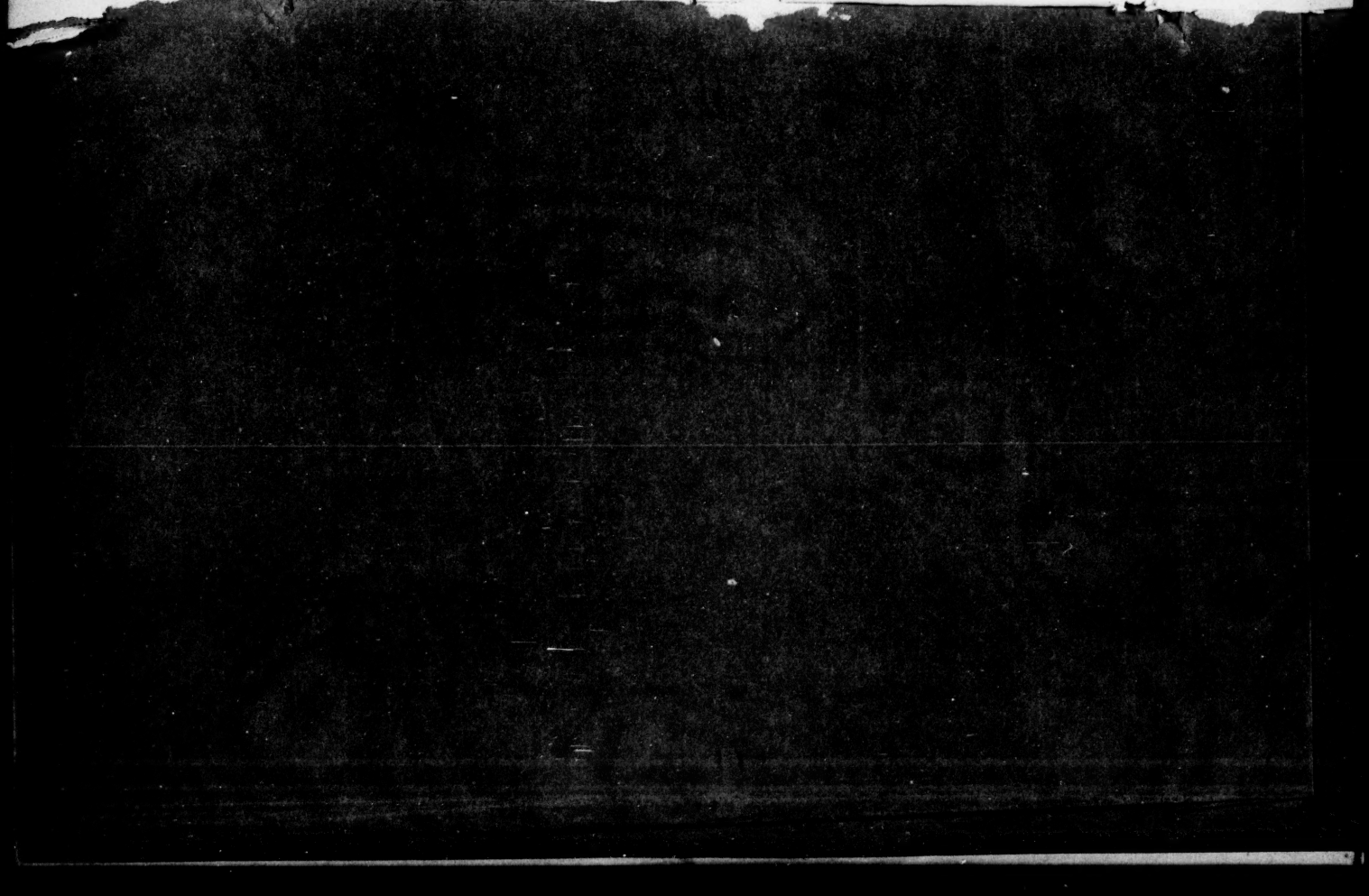
HENRY N. FARWELL, PLAINTIFF IN ERROR,

vs.

JAMES W. CONVERSE, GEORGE M. BARTHOLOMEW, J. GRAHAM GARDINER, RECEIVERS OF THE BOSTON, HARTFORD AND ERIE RAILROAD COMPANY.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

FILED OCTOBER 14, 1873.



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INDEX.

	Original.	Print.
Writ of error	1	1
Citation	3	2
Bond	5	2
Receivers' petition	7	3
Answer	10	6
Amended	12	8
Amended petition	12	9
Answer to amended petition	13	9
Reference to master	14	9
Master's report	14	10
Exceptions to master's report	33	26
Respondents' specifications	36	29
Decree	41	31
PLAINTIFFS' TESTIMONY.		
Deposition of Samuel Currey	44	33
John M. Belden	86	68
Geo. M. Bartholomew	92	73
Emory Washburn	122	98
Charles P. Clark	130	106
James S. Whitney	135	109
Charles P. Clark, (recalled)	145	119
James W. Converse	146	119
Charles H. Parkhurst	155	126

	Original.	Print.
Deposition of Charles P. Clark, (recalled)	155	126
Geo. M. Bartholomew, (cross-examination)	161	131
Emory Washburn, (resumed)	175	143
DEFENDANTS' TESTIMONY.		
Deposition of Geo. W. Long	181	148
Thomas E. Graves	183	149
John S. Eldridge	219	180
Henry N. Farwell	225	185
Geo. W. Long, (resumed)	233	191
Henry N. Farwell, (resumed)	239	196
John C. Watson	278	227
PLAINTIFFS' REBUTTAL.		
Deposition of Thomas E. Graves	282	230
PLAINTIFFS' EXHIBITS.		
Exhibit A, copy record sup. ct. R. I., A & W. Sprague *vs.* H. P. & F. R. R. Co	289	236
B, copy telegram H. S. Barry, treasurer, to S. Currey	290	237
C, telegram A. & W. Sprague,	291	237
D, letter Charles Green,	291	238
F, T. E. Graves,	291	238
G, T. E. Graves,	292	238
H	293	239
K	302	243
L	304	245
M	306	247
N	307	248
O	308	249
P	308	249
Q, R, S, T, U, V	309	250
X	311	251
Y	314	253
Z	315	254
A 1	315	255
B 1	315	255
C 1	315	255
D 1	316	255
E 1	316	255
E 2	317	256
F 1	317	256
J 1	317	256
S 1	317	256
T 1	317	256
U 1	318	356
V 1	318	257
W 1	318	257
DEFENDANTS' EXHIBITS.		
Exhibit E	319	257
Exhibit I	320	257
Folios 1–10	330	263
Exhibit 1	342	271
2	346	274
5	346	274
9	347	275

1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme judicial court of the Commonwealth of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme judicial court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit entitled George Ellis et alii, in equity, v. Boston, Hartford & Erie Railroad Company et al., in the matter of the petition of James W. Converse & alii, receivers, petitioners, v. Henry N. Farwell, between James W. Converse, George M. Bartholomew, and J. Graham Gardiner, receivers, petitioners, and Henry N. Farwell, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Henry N. Farwell, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this sixth day of May, in the year of our Lord one thousand eight hundred and seventy-three.

JOHN G. STETSON,
Clerk of the Circuit Court of the United States.

Allowed by—

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

2 (Indorsed:) 93 Eq. Writ of error. George Ellis et al. v. Boston, Hartford and Erie Railroad Company. In the matter of the petition of James W. Converse et al., receivers, v. Henry N. Farwell. Filed in the clerk's office of the supreme judicial court, county of Suffolk, May 7, 1873. Att., G. C. Wilde, clerk.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

And now the judges of the supreme judicial court of said Commonwealth make return of their writ, by annexing hereto and sending here-

with, under the seal of said court, as within commanded, a true and attested copy of the record and process in the suit within mentioned, and of the testimony therein, and of all proceedings therein.

In testimony whereof I, George C. Wilde, clerk of said court, within and for said county of Suffolk, have hereunto set my hand and the seal of said court, this sixth day of October, in the year of our Lord eighteen hundred and seventy-three.

[SEAL.] GEO. C. WILDE, *Clerk.*

3 The United States of America, to James W. Converse, George M. Bartholomew, and J. Graham Gardiner, receivers of the Boston, Hartford and Erie Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme judicial court of the Commonwealth of Massachusetts, holden at Boston, within and for the county of Suffolk, wherein Henry N. Farwell is plaintiff in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States, this sixth day of May, in the year of our Lord one thousand eight hundred and seventy-three.

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

4 (Indorsed:) 93 Eq. Citation in Ellis & al. v. Boston, Hartford and Erie R. R. in Converse et al., rec'rs, v. Farwell. Filed May 26, 1873. Att., Geo. W. Nichols, ass't cl'k.

BOSTON, *May 12th*, 1873.

U. S. OF AMERICA, *Mass. dist., ss:*

I have this day served the within citation upon the said Converse et al., defendants in error, by giving in hand to Benjamin F. Brooks and Joshua D. Ball, of the firm-name of Brooks & Ball, attorneys of record of the said defendants in error, a true and attested copy of the same.

R. G. USHER,
U. S. Marshal.

Fees: Serv. & travel, $4.12; 2 copies, 2.00—6.12.

5 *Bond on writ of error.*

Know all men by these presents, that we, Henry N. Farwell, of Boston, in the State of Massachusetts, as principal, and Charles H. Cummings, of Cambridge, and James F. Edwards, of Newton, both in said State, as sureties, are held and firmly bound unto James W. Converse, George M. Bartholomew, and J. Graham Gardiner, receivers of the Boston, Hartford and Erie Railroad Company, in the full and just sum of one hundred thousand dollars, to be paid to the said Converse, Bartholomew, and Gardiner, receivers, their certain attorney, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated the sixth day of May, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas lately, at a supreme judicial court of the Commonwealth of Massachusetts, holden at Boston, within and for the county of Suffolk,

in a suit depending in said court entitled George Ellis et alii, in equity, v. Boston, Hartford and Erie Railroad Company et al., in the matter of the petition of James W. Converse et alii, receivers, petitioners, v. Henry N. Farwell, judgment was rendered against the said Henry N. Farwell, and the said Henry N. Farwell having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Converse, Bartholomew, and Gardiner, receivers of the Boston, Hartford and Erie Railroad Company, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Henry N. Farwell shall prosecute his said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

HENRY N. FARWELL. [L. S.]
CHARLES H. CAMMINGS. [L. S.]
JAMES F. EDWARDS. [L. S.]

Signed, sealed, and delivered in presence of—
JOHN G. STETSON.

Approved:

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest:

JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

(Indorsed:) 93. Eq. Copy of bond on writ of error. George Ellis et al. v. Boston, Hartford and Erie Railroad Company. In the matter of James W. Converse et al., receivers, v. Henry N. Farwell. Filed in the clerk's office of the supreme judicial court, county of Suffolk, May 7, 1873. Att., G. C. Wilde, clerk.

6 COMMONWEALTH OF MASSACHUSETTS, *Suffolk Co., ss:*

At the supreme judicial court, begun and holden at Boston, within and for the county of Suffolk, on the first Tuesday of April, being the first day of said month, in the year of our Lord one thousand eight hundred and seventy-three, sitting as a court of chancery:

562.

GEORGE ELLIS ET AL.
vs.
THE BOSTON, HARTFORD & ERIE RAILROAD Company et al.

JAMES W. CONVERSE ET ALS., RECEIVERS,
vs.
HENRY N. FARWELL.

7 To the honorable the justices of the supreme judicial court:

Respectfully represent unto your honors James W. Converse, George M. Bartholomew, George Talbot Olyphant, and J. Grahame Gardiner,

receivers appointed in the above-entitled cause, that, by the decree of this honorable court appointing receivers in said cause, they were invested with full power and authority to enter upon and take possession of all and singular the railways of the Boston, Hartford & Erie Railroad Company, together with all of its lands, tracks, lines, rails, bridges, ways, depots, stations, water-tanks, shops, buildings, piers, wharves, locomotives, cars, erections, fences, fixtures, privileges, franchises, rights, leases, charters, leasehold estates, leasehold rights, and property, and all and singular all other property, real and personal, corporeal and incorporeal, of said Boston, Hartford & Erie Railroad Company, and all the earnings and income thereof and therefrom, including all the moneys, credits, choses in action, evidences of debt, books, deeds, leases, contracts, papers, and vouchers, of said Boston, Hartford & Erie Railroad Company, by whatsoever name the same might be known or designated, and the same to demand, collect, and receive, by suit or otherwise.

And in and by said decree the officers, agents, and employees of said Boston, Hartford & Erie Railroad Company, having the custody, possession, care, or control of said property, so to be taken possession of by said receivers, or any part thereof, were ordered and required forthwith to surrender, give up, and deliver the same to said receivers, their agents and employees; and the legal possession and control of all said property in and by virtue of said decree it was therein declared vested immediately in said receivers.

And in and by said decree said receivers were ordered and directed to enter at once upon and take and retain the possession of the offices of said company, and of all the property, deeds, leases, contracts, books, papers, and vouchers of which they were so appointed receivers.

And in and by said decree it was ordered that said Boston, Hartford & Erie Railroad Company, its officers, agents, employees, servants, counsellors, and attorneys, be restrained and enjoined from interfering in any manner with any of the said property, books, papers, and vouchers, except to surrender and deliver the same into the hands of said receivers.

And said receivers further represent unto your honors, that they are informed, and believe it to be true, that Henry N. Farwell, of Boston, in said county of Suffolk, was at the time said decree was passed appointing receivers as aforesaid, vice-president of said corporation and one of its directors, and a member of the executive committee and finance committee of said board of directors, and then had in his possession as such officer of said corporation the following-described documents and property belonging to said corporation, to wit: coupons of bonds of the Hartford, Providence & Fishkill Railroad Company, as follows:

270	coupons due July 1, 1857, for $35.00 each, amounting to	$9,450 00
91	coupons due July 1, 1857, for $17.50 each, amounting to	1,592 50
31	coupons due July 1, 1857, for $35.00 each, amounting to	1,085 00
22	coupons due July 1, 1857, for $17.50 each, amounting to	385 00
3	coupons due July 1, 1857, for $52.50 each, amounting to	157 50
1	coupon due July 1, 1857, for	105 00
1	coupon due July 1, 1857, for	54 43
1	coupon due July 1, 1857, for	21 00

1	coupon due July 1, 1857, for	14 00
1	coupon due July 1, 1857, for	6 13
414	coupons due July 1, 1857, for $35.00 each, amounting to	14,490 00
2	coupons due July 1, 1857, for $17.50 each, amounting to	35 00
400	coupons due January 1858, for $35.00 each, amounting to	14,000 00
1	coupon due January 1, 1858, for	17 50
384	coupons due July 1, 1858, for $35.00 each, amounting to	13,440 00
and 500	coupons, $35.00 each, amounting to	17,500 00
also 500	coupons due July 1, 1857, for $30.00 each, amounting to	15,000 00

of bonds of the city of Providence; and that all said coupons were, at the time when said receivers were appointed receivers as aforesaid by said decree, in the custody of said Farwell, as an officer of said corporation as aforesaid, and were and still are the property of said Boston, Hartford & Erie Railroad Company, and are a part and portion of its property, of which they, the said receivers, were in and by said decree ordered to take possession, and which in and by said decree said Farwell was bound and required to deliver up to said receivers.

And said receivers further represent that said Farwell had notice of said decree; that afterwards said receivers demanded of said Farwell said coupons, and said Farwell declined to give them up to said receivers.

And said receivers further represent unto your honors that said Farwell pretended to hold said coupons as collateral security for the payment of a pretended debt or debts of said Boston, Hartford & Erie Railroad Company, or of a pretended debt of said Hartford, Providence & Fishkill Railroad Company; but said receivers are informed, and believe it to be true, that no such debt or debts exist; and even if such debts do exist, that said coupons were never pledged or delivered to said Farwell as collateral security for any debt or debts whatsoever; "but, if ever held by said Farwell as security for any debt, such debt had been paid, satisfied, and discharged before the date of said decree appointing said receivers; and if said coupons ever were assigned, transferred, or delivered to said Farwell, they were assigned, transferred, or delivered to him as agent of or in trust for said Boston, Hartford & Erie Railroad Company;" and that he has no right to any of said coupons or to the possession thereof.

And said receivers further represent unto your honors that said receivers have recently learned and been informed, and believe it to
9 be true, that said Farwell is about to sell said coupons, and to transfer the same to the purchaser or purchasers thereof; and that he has threatened to collect the same of the respective corporations issuing the same.

And said receivers further represent unto your honors that said coupons cannot be come at to be replevied, and that they are secreted by said Farwell so that they cannot be replevied; and said receivers are informed, and believe it to be true, that said Boston, Hartford & Erie Railroad Company, neither at nor before the time of the appointment of receivers in this cause, had any right or authority to sell or transfer or put in circulation said coupons of said bonds of said Hartford, Providence & Fiskhill Railroad Company.

And said receivers pray that said Farwell may be ordered to surrender and deliver up to said receivers all said coupons, and may be restrained and enjoined by the injunction of this honorable court from collecting said coupons or any of them, and from selling, transferring, negotiating, or in any manner disposing of said coupons or any of them, except to deliver the same into the hands of said receivers; and for such further and other relief as the nature and circumstances of this case may require and as to your honors shall seem meet.

GEORGE TALBOT OLYPHANT,
J. W. CONVERSE,
J. GRAHAME GARDINER,
GEO. M. BARTHOLOMEW,
Receivers.

BOSTON, *May* 2, 1871.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

Then personally appeared the above-named George M. Bartholomew, and made oath that the statements contained in the foregoing petition, so far as made upon his personal knowledge, are true; and so far as made upon information and belief are verily believed by him to be true. Before me.

JOSHUA D. BALL,
Justice of the Peace.

Order of notice to show cause returnable on Saturday, May 6, at 9 o'clock a. m., why injunction, pendente lite, should not issue as prayed for. In the mean time, and until further order of the court, the defendant, Farwell, is to be restrained by injunction from making any sale, transfer, delivery, or other disposition of said coupons otherwise than to said receivers.

JOHN WELLS, *J. S. J. C.*

BOSTON, May 2, 1871.
Filed May 2, 1871.

This petition was filed in this court at the April term thereof, A. D. 1871, when and where the parties appeared, and the respondent filed his sworn answer as follows, to wit:

This respondent, saving and reserving to himself all right and
10 advantage of exception to the many errors and insufficiencies of the said petition, for answer thereunto, or unto so much thereof as he is advised is material or necessary to be answered unto, saith:

That he believes it to be true, and admits, that the said petitioners were by a decree of this honorable court appointed receivers of the said Boston, Hartford & Erie Railroad Company, as alleged in said petition, with the rights, powers, and duties in said petition set forth.

And this respondent, further answering, saith, that he is at present, and without an inspection of the records of said railroad company, unable to say whether, at the date of the appointment of said receivers aforesaid, he held the offices in said petition alleged to have been held by him in said Boston, Hartford & Erie Railroad Company, and he neither admits nor denies the same; but he leaves the said petitioners to prove the same, if material.

And this respondent, further answering, saith, that he admits, and it is true, that he is now in possession of and holds the property or coupons in said petition mentioned, excepting five hundred coupons, for thirty dollars each, of the city of Providence, in the State of Rhode Island.

And this respondent, further answering, saith, that all of the coupons in said petition mentioned, excepting only five hundred coupons of the Hartford, Providence & Fishkill Railroad Company, for thirty-five dollars each, were, before the appointment of six receivers, assigned, transferred, and delivered to this respondent, for good and valuable consideration, by Messrs. A. & W. Sprague, of said Providence, as collateral security for a certain unpaid claim, or demand, or account, which said A. & W. Sprague had and held against the Hartford, Providence & Fishkill Railroad Company, which said claim or account was, at the time of the transfer of said coupons to this respondent, purchased and bought of the said A. & W. Sprague by this respondent, and by them assigned and transferred to him.

And this respondent further saith, that among the coupons so assigned, transferred, and delivered to him as aforesaid were four hundred and ninety-seven coupons of the city of Hartford, in the State of Connecticut, for thirty dollars each, which said coupons were afterwards, and before the date of the petition of said receivers, delivered by this respondent to the treasurer of said city, who, in return and exchange therefor, delivered to this respondent five hundred coupons of the Hartford, Providence & Fishkill Railroad Company, which said coupons this respondent still holds.

And this respondent, further answering, denies that the said coupons, or any of them, ever were or are the property of the said Boston, Hartford & Erie Railroad Company; and denies that the said company has or ever had any right, title, or interest in or to the said coupons or any of them, or that the said receivers are entitled to claim and receive possession of the same; and denies that he holds or has ever held the said coupons or any of them as an officer or agent of said Boston,
11 Hartford & Erie Railroad Company, or in any way in trust for that company, as in said petition alleged; but he alleges that said coupons were transferred and delivered to him by the said A. & W. Sprague, as aforesaid, as collateral security for the aforesaid claim or account, and said coupons were purchased by this respondent as aforesaid, and by him paid for out of his own funds or money, and that said account and all of said coupons were, and, excepting the aforesaid five hundred coupons of the city of Providence, are, the sole and exclusive property of this respondent.

And this respondent, further answering, saith, that as to the aforesaid five hundred coupons of the city of Providence, the same were, before the date of the said petition, and before any demand made by these receivers upon this respondent, for a good and valuable consideration and in good faith by this respondent, sold, transferred, and delivered to bona-fide purchasers, and are not in the possession or under the control of this respondent.

And this respondent denies that he has at any time hidden or secreted, or is now hiding or secreting, any of the said coupons, or that he intends or desires to hide or secrete said coupons or any of them.

Wherefore this respondent submits that he ought not to be ordered or required to deliver up the said coupons or any of them to the said receivers, as prayed in their said petition, and that he ought not to be restrained by injunction of this honorable court from using and disposing of the said coupons as to him shall seem fit; and without admitting that any other matter or thing in the said petition contained, material or necessary to be answered, and not herein sufficiently answered, is true, submits that the said petitioners are not entitled to any relief whatever against him. All of which this respondent is ready to aver, maintain,

and prove; and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HENRY N. FARWELL.

BROWNE & HOLMES,
J. H. WIGGIN,
Solicitors and of Counsel for Respondent.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

On this 10th day of May, at Boston, in said county, personally appeared the above-named Henry N. Farwell, and made solemn oath that the statements contained in the foregoing answer, by him subscribed, so far as made upon his personal knowledge, are true; and so far as made upon information and belief that he verily believes the same to be true. Before me.

N. AUSTIN PARKS,
Notary Public.

Filed May 10, 1871.

Thence the same was continued unto the then next September term, when and where the parties appeared, and, by leave of court, the respondent amended his answer as follows, to wit:

12 And now comes the said Henry N. Farwell, respondent in the above-entitled cause, and amends his answer to the petition of James W. Converse, George M. Bartholomew, George Talbot Olyphant, and J. Grahame Gardiner, receivers, by inserting after the paragraph ending with the words "or that he intends or desires to hide or secrete said coupons or any of them," the words: "And this respondent, further answering, avers that before the filing of said petition, to wit, on the day of 1870, the said Boston, Hartford & Erie Railroad Company was, by a decree of the district court of the United States for the district of Massachusetts, adjudged a bankrupt, and that afterwards, to wit, on the eighteenth day of March, 1871, J. Lothrop Thorndike, a duly-appointed register in bankruptcy of said district, did, by his deed of assignment and according to the statute of the United States in such case made and provided, convey and assign to Charles S. Bradley, Charles R. Chapman, and George M. Barnard, assignees of said Boston, Hartford & Erie Railroad Company, duly elected and appointed, all the estate, real and personal, of the said Boston, Hartford & Erie Railroad Company, including all the property of whatever kind of which the said railroad company was possessed, or in which it was interested, or which it was entitled to have on the twenty-first day of October, 1870, excepting only such property as was, by the provisions of said statute, exempted from the operation of said assignment. Therefore this respondent submits that the said petitioners had not, at the date of the filing of the said petition, if they ever had, any right to the possession of any of the property of the said Boston, Hartford & Erie Railroad Company, and particularly to the possession of the coupons in said petition alleged to be the property of the said company and in the possession of this respondent;" and prays that the said amendment may be allowed.

HENRY N. FARWELL.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

At Boston, in said county, this 8th day of September, A. D. 1871, personally appeared the above-named Henry N. Farwell, and made oath

that he has read the foregoing amendment to answer by him subscribed, and that the same is true to the best of his knowledge and belief, before me.

N. AUSTIN PARKS,
Notary Public.

Filed September 13, 1871.

And the petitioners, by leave of court, amended their petition as follows, to wit:

Now said petitioners come, and with the leave of the court first obtained, amend their petition by inserting between the word "whatsoever" and the word "and," in the twenty-second line from the top of the fifth page thereof, the following, to wit: "But if ever held by said Farwell as security for any debt, such debt had been paid, satisfied, and discharged before the date of said decree appointing said receivers; and if said coupons ever were assigned, transferred, or delivered to said Farwell, they were assigned, transferred, or delivered to him as agent of or in trust for said Boston, Hartford & Erie Railroad Company."

13

Filed September 29, 1871.

And the respondent filed his answer to the petition as amended as follows, to wit:

And now comes the respondent, Henry N. Farwell, and for answer to the amendment to the petition of the said receivers, says, that he denies that he has since the date of the decree appointing said receivers, or at any time, received payment, satisfaction, or discharge of the debt of the said Providence, Hartford & Fishkill Railroad Company, in his said answer alleged to have been purchased by this respondent, or that the same has been, since said date, paid, satisfied, or discharged; and denies that said coupons were assigned, transferred, or delivered to this respondent as agent of or in trust for said Boston, Hartford & Erie Railroad Company.

HENRY N. FARWELL.

BROWNE & HOLMES,
Solicitors and of Counsel.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

At Boston, in said county, this 29th day of September, A. D. 1871, personally appeared the above-named Henry N. Farwell, and made solemn oath that the foregoing answer by him subscribed has been read by him, and that the statements therein made are true, before me.

N. AUSTIN PARKS,
Notary Public.

Filed October 5, 1871.

Whereupon the petitioners, by their attorneys, Brooks & Ball, esq'rs., joined issue upon the amended answer of said respondent, and the case was referred to a master, as follows, to wit:

It is now ordered that the matter involved in said petition be referred to Isaac F. Redfield, esq., a counsellor of this court, special master, who is to hear the parties upon all the facts in controversy between said receivers and the respondent upon the pleadings in each case, and shall find all facts so in controversy between them, and with the findings report all the evidence taken by him upon any specific

14

question of fact, at the request of either party, for revision by this court.

The master shall take no evidence for the purpose of proving the general indebtedness of said Farwell to said railroad corporation when he procured or while he had in his possession the property in controversy; but if, upon his report, the relations of Farwell in this respect shall seem to the court to be material, further steps shall be taken, by reference to master or otherwise, to ascertain them.

By the court.

GEO. C. WILDE, *Clerk.*

SEPTEMBER 27, 1871.

And afterwards, during the term, the master made his report, as follows, to wit:

The special master submits the following report:

The petition claims that certain coupons, cut from the bonds issued by the Hartford, Providence & Fishkill Railroad, and now in the possession and control of the defendant, Farwell, amounting in round numbers, as set forth in the petition, to nearly $100,000, more or less, are the property of the Boston, Hartford & Erie Railroad, and should therefore be surrendered to the receivers. The defendant, Farwell, claims to be the owner of all such coupons as are now in existence, amounting to about $84,000, $15,000 of which have been assigned to the other defendants under such circumstances as they claim entitle them to hold them as *bona fide* purchasers. The master will now give the facts, which he finds proved and not proved, affecting the title of the coupons in dispute, with a view to show whether the petitioners have established the claim set up in their bill.

The defendant, Farwell, in his answer to the petition, admits that the petitioners are entitled to claim the custody and possession of all the property belonging to the Boston, Hartford & Erie Railroad Company. He also admits the possession of the coupons described in the petition, except the $15,000 of the city of Providence, which he claims to have sold and transferred, bona fide and for a valuable consideration, to the other defendants; but he claims to be entitled to hold those still in his possession as against the Boston, Hartford & Erie Railroad Company, and to enforce them against the company which issued them. The defendants, before the testimony was entered upon, raised the question whether the petitioners could proceed in this matter in this court, under existing circumstances, the Boston, Hartford & Erie Railroad Company having been decreed a bankrupt under the act of Congress, and such proceedings being still pending in the United States circuit and district courts, having proper jurisdiction of the matter in bankruptcy, and moved the master to withhold further proceedings; and, to support such motion, produced a certified copy of the decree in bankruptcy and proof of the pendency of the proceedings under it, in regard to which no question was made. The master regarded the motion as not properly addressed to him, and therefore as having no proper connection with or influence over his proceedings. The defendant also claimed that the functions of the receivers had ceased by force of some former decree of this court; all which is referred to the court.

The coupons in dispute were a portion of the interest-coupons upon the mortgage-note or bonds issued by the Hartford, Providence & Fishkill Railroad, a corporation existing under the laws of the States of Connecticut and Rhode Island, said bonds issued before the year 1857, and

these coupons being for the interest falling due upon such bonds July, 1857, and January, 1858. The Spragues, a mercantile firm in Providence, R. I., had rendered pecuniary aid to the Hartford, Providence & Fishkill Railroad, and at the time these coupons fell due were under contract with that company to advance money to pay their coupons as they fell due; and in pursuance of such contract advanced the money to pay what was due upon about one-half the account, say $42,648.06; and the other portion, being $42,715, were cut by the Spragues from their own bonds, and the amount of both were charged in account, amounting to $85,363.06; all which will appear by reference to their statement of account, on file among the evidence therewith returned to court.

16 The Spragues claimed to hold both sets of coupons as collateral security for the repayment of the money advanced to redeem the coupons, and also to be paid interest upon their advances, as their statement of account will show.

By means of legislative powers obtained from the proper sources, the Boston, Hartford & Erie Railroad Company, duly incorporated, had become the purchaser of all the franchises and property of the Hartford, Providence & Fishkill Company on the 28th of August, 1863, but which contract was not delivered until November 14, 1863. By the terms of this purchase it became the duty of the former company to assume all the debts of the latter. In fulfilment of the terms of the purchase 9,620 shares of the capital stock of the Boston, Hartford & Erie Company were put into the hands of the trustees under the mortgage upon the Hartford, Providence & Fishkill Company, for the purpose of paying or purchasing the floating debts of the Hartford, Providence & Fishkill Company by being exchanged for such debts at the par value, five shares for every dollar. Mr. Bartholomew, one of the trustees, had taken an interest in having the debts exchanged for the stock, and had effected an exchange to some extent, so that on the 1st day of April, 1866, the time limited for the exchange, there remained 7,349 shares in the hands of the trustees, and some of the debts intended to be arranged by this stock still outstanding. During the period of the trust the Spragues had been asked to accept the stock in payment of their debt, but declined. The time for exchanging debts for stock having expired, and the trustees being in doubt whether any of the remaining debts were so liquidated as to justify their proceeding under that provision in the contract requiring a sale at auction in certain contingencies, they applied to the superior court in Connecticut for directions in regard to the disposition of the stock, and that court directed it to be reconveyed to the nominees of the Boston, Hartford & Erie Company, on the ground that the further execution of the trust under the contract had become impossible. The company appointed John S. Eldridge, president, Henry N. Farwell, vice-president, and James W. Converse, director, trustees, to receive, and who did on the 7th November, 1868, receive, the conveyance of their 7,349 shares of the company's stock, which had acquired the name of "the debt stock," on account of the appropriation before stated to have been made of it. It seems by common consent of the officers of the company, and of the trustees, ever after, to have been regarded as subject to the trust of making provision for the floating debts of the Hartford, Providence & Fishkill Company, the chief portion of which seems to have been held by the Spragues and some of their friends in Rhode Island, which were all required to be settled at one time, the Spragues refusing to sell unless the other debts were purchased at the same time.

For some reason of policy in keeping the good-will of influential friends

of the enterprise, the officers of the Boston, Hartford & Erie Company regarded it as extremely desirable to remove the Sprague debt out of the way in some manner which should be satisfactory to them. This purpose seems to have been formed as early as 1866, and produced many attempts at negotiation between the officers and agents of the Boston, Hartford & Erie Company and the Spragues for that end. Mr. 17 Bartholomew had informed the Spragues of this "debt stock," and requested them to accept it in lieu of their claim as before stated, which they peremptorily declined. They were then asked to accept the paper of Eldridge and Farwell, which they also declined. In the spring of 1868, an increased motive for satisfying or taking out of the way the Sprague debt seems to have occurred. The officers and agents of the Boston, Hartford & Erie Company had, the year before, obtained an act of the legislature of this Commonwealth, granting to the company State aid to the extent of $3,000,000, upon condition of satisfying the governor and council that the security offered, being $4,000,000 of the mortgage bonds of the company, called the Berdell bonds, was good, and that the road would be completed without further aid. A board of commissioners had been appointed for the purpose of investigating the title and condition of the property covered by the Berdell mortgages, amounting to $20,000,000. These commissioners had learned of the Sprague claim and the incumbrance created by it, and were desirous of having it removed, which Mr. Farwell, the defendant, at first assured them "that was a thing they could take care of, and that it would be settled or satisfied." Subsequently, and after the 27th day of May, 1868, he told the commissioners that the Sprague debt "had been satisfied and settled," or that "they had settled it."

Mr. Farwell was at this time, and during all the time of his active connection with the business of the Boston, Hartford & Erie Company, acting as vice-president of the company. He was the only person connected with the company of large pecuniary resources, and who had adventured largely in the success of the enterprise; and being a man of decided character and controlling will, especially where he had large interests at stake, his influence in the board of direction of the Boston, Hartford & Erie Company, and in all movements of that company, was entirely controlling. In the language of one of the witnesses, who had been a director during these transactions, and for some time a member of the executive committee, "he was the financial officer of the road; he was the capitalist on the board of directors that looked after the financial business of the road; the man who took care of the money affairs of the road." "Mr. Farwell was allowed to take the securities of the road and hypothecate them for the benefit of the road—to carry on the business of the road." "Mr. Farwell had a large portion of the resources, in the shape of bonds and stock, before he got any money." This witness further states that the treasurer of the company being his partner in business, and the assistant treasurer also, did what "he told them to do." The testimony is full of the most convincing evidences that Mr. Farwell during the time that he was prominently connected with the affairs of the road, which extended from 1867, onward, had not only a preponderating influence in the affairs of the road, but that he absolutely had everything his own way, and whatever he thought best to have done or omitted was so done or omitted. But there is no evidence that he did not conduct the affairs of the road in all respects in the utmost good faith and with the sincere purpose of serving the best interest of all concerned. This is said in order to show that Mr. Farwell is to be held justly responsible for all that he did or suffered to be done, or omit-

ted to have done, in connection with the affairs of the road while
18 he was actively connected with it. This responsibility, so far as the present case is concerned, seems to depend upon some few prominent points in regard to his connection with the coupons in question, which I shall now proceed to state, with such detail as is deemed important to give the court a full comprehension of the exact responsibility of Mr. Farwell in each particular instance.

The first inquiry made in the case is in regard to the precise title which Mr. Farwell acquired when he obtained these coupons. The Spragues had regarded all the coupons now in question in the same light, and as collateral security for their demand. The claim of the Hartford, Providence & Fishkill Co. to have furnished money for the payment of specific coupons, the Spragues claimed to be limited to some $14,300 of coupons, which they refused to transfer to Mr. Farwell, and did surrender to the Boston, Hartford & Erie Co. at the time that their claim was transferred to Mr. Farwell; and in this claim we are disposed to believe they were correct, and that the other credits in their account were not on account of moneys received for any specific purpose, but on general account. Their rights as to the other coupons have been sufficiently stated, and I think their claim to retain them all as collateral security was well founded.

In the spring of 1868, after the Spragues had declined to accept the stock of the Boston, Hartford & Erie Co., in exchange for their claim or the paper of Eldridge and Farwell, and after Mr. Farwell had given the State commissioners assurance that the Sprague claim, with its attendant incumbrances by way of mortgage or attachment upon the property forming the line of railway from Boston to Fishkill, and from Providence to meet this line, should be taken out of the way, he concluded to raise the money himself and satisfy the claim of the Spragues by purchasing their interest and having it assigned to him. The Boston, Hartford & Erie Co. had at this time no money in their treasury, and no means of raising any, except by the sale of stock, which was so low in the market as to make that resort ruinous, or the sale of the Berdell bonds, which had to be handled somewhat carefully, in order to keep them in good credit. The first attempt to make sale of any of these bonds was to the New York & Erie Railway Company, a road expecting to connect with this company's road in one continuous line of business. Mr. Eldridge was at this time president of both of these roads, and seemed to be giving his main attention to the New York road, while Mr. Farwell, as vice-president, had the chief management of the Boston, Hartford & Erie Co. The arrangement with the New York & Erie Co. was for them to receive $5,000,000 of the Berdell bonds, and pay $4,000,000 in money for them to the Boston, Hartford & Erie Co. Mr. Eldridge had disposed of some of the Berdell bonds in New York, being a part of the $5,000,000, before the 27th of May, 1868, and received money to the amount of $400,000, which he had remitted to Mr. Farwell, or to A. G. Farwell & Co., by check, and it was passed to his credit on the books of A. G. Farwell & Co. He had drawn out of this from time to time, so as at one time to reduce it to $125,000, but he immediately restored $100,000, so that on the 27th of May, 1868, there stood to the credit of Mr.
19 Eldridge on the books of A. G. Farwell & Co. $225,000, and this sum remained so until some time in 1869, when it was passed to the credit of the Boston, Hartford & Erie Company, as will appear upon their account rendered. It seems that Mr. Farwell made no inquiries in regard to this money, and did not at the time he purchased the Sprague claim, on the 27th of May, 1868, know that the money belonged to the

Boston, Hartford & Erie Co. But unquestionably he might have learned that fact if he had asked Mr. Eldridge, and might probably have had enough of this money applied to pay the Sprague claim if he had deemed it expedient. But he did not. He thought it more prudent and more for the advantage of all concerned to purchase the Sprague claim himself, and have it secured in the mode it was. He, therefore, on the 27th of May, 1868, went to Providence and purchased the claim of the Spragues against the Hartford, Providence & Fishkill Railroad Company for $135,000, the Spragues being willing to accept that sum in full for their claim. It was perfectly well understood by the Spragues, and by all the directors of the Boston, Hartford & Erie Co., that in all the negotiations for the settlement of Spragues' claim by Bartholomew, Eldridge and Farwell, that each of the persons expected to have the claim assigned to them, and that it was not expected to pay for it with the money of the Boston, Hartford & Erie Co. When Mr. Farwell, therefore, bought it, he took an assignment upon the back of the account, giving him all the rights of the creditors, and the right to enforce it in their names at his own expense and risk. There had been suits pending upon the same in Connecticut and Rhode Island for some ten years, and in the former State there were some attachments of property. These suits were immediately discontinued, and the one in Rhode Island was entered upon the docket as "settled;" and one of the witnesses, Mr. Currey, a highly respectable lawyer of long standing practice in that State, testified that he believed the supreme court of Rhode Island would regard that entry as a final bar of claim. I might have some doubts on that point as matter of fact; but as Mr. Farwell did not purchase the claim with any purpose of ever enforcing it against the Hartford, Providence & Fishkill Campany, but solely relying upon his collaterals, including the coupons and the ultimate responsibility of the Boston, Hartford & Erie Company, the question of the right to sue the Hartford, Providence & Fishkill Company is not important.

The coupons, which Spragues claimed to hold as collateral security for the payment of their claim, were delivered to Mr. Farwell concurrently with the assignment of the claim to him, and he has retained them ever since, and now testifies that he has always relied upon them as a means of enforcing the payment of the Sprague claim to that extent. There is no doubt he is sincere in his testimony. But if it were important to determine whether, at the time he purchased the claim, he made any particular or special reliance upon these coupons as a means of enforcing the payment of the claim, we should be inclined to believe he did not. At the time he purchased the claim, Eldridge, and all connected with the transaction, and who were supposed to have any agency in the matter, assured him that the remaining 7,349 shares of the "debt-stock" of the Boston, Hartford & Erie Company should be retained or dedicated, as a sacred fund, for the purpose of refunding the money paid out by him to procure the Sprague claim; and Mr. Farwell unquestionably relied chiefly upon this stock and the ultimate responsibility of the Boston, Hartford & Erie Company for the re-imbursement of the money so paid out. It is not probable that at this time Mr. Farwell really contemplated the necessity of ever resorting, in any form, to the enforcement of the claim, or any portion of it, against the Hartford, Providence & Fishkill Company. For he was buying up this claim for the benefit of the Boston, Hartford & Erie Company, and with the expectation that that company would obtain State aid to the extent of $3,000,000, and thus complete their road to Fishkill in a short period; and he would not have purchased the Sprague

claim unless with this expectation and to forward the accomplishment of this purpose. If this expectation had been realized there certainly would not have been any necessity of resorting to any other party but the Boston, Hartford & Erie Company, for whose benefit and "in whose interest" he had purchased the claim. But there is no evidence that Mr. Farwell ever relinquished any claim upon these coupons which the purchase of the claim and the concurrent delivery and retention of the coupons as collaterals would give him, except his representations in order to obtain State aid hereafter stated; and we are inclined to believe that there is no other satisfactory ground of finding, as matter of fact, that he ever did wholly forego all purpose of ultimately relying upon the coupons, provided all other security should fail, although that contingency must, at the time of his purchase of the claim, have seemed extremely improbable, if not indeed almost impossible.

The money which he paid to the Spragues for their claim was taken from the funds of A. G. Farwell & Co. and charged to the defendant Farwell on their books. There was at the same time standing on the books of the company to the credit of John S. Eldridge $225,000 of the moneys of the Boston, Hartford & Erie Co., in the manner we have before explained; and the bank-account of the Farwell company, from which Mr. Farwell drew the $135,000 he paid the Spragues in purchase of their claim, was, in fact, at that time increased by the amount of this same $225,000 so standing to the credit of Mr. Eldridge, as before stated. But there is no evidence whether Mr. Farwell, in drawing out of this bank-account the $135,000, actually drew upon any portion of the $225,000, but he testified that this money, while in the keeping of his company, "did not lie idle."

After Mr. Farwell purchased the Sprague claim he exchanged $15,000 of the coupons so delivered to him, being the coupons of the city of Hartford, for an equal amount of the coupons of the Hartford, Providence & Fishkill Co. which the city held as their indemnity against their own outstanding coupons, and which exchange it would be the duty of the Hartford, Providence & Fishkill Co., and of the Boston, Hartford & Erie Co., as their successors, to make wherever the coupons of the city of Hartford had been actually paid and taken up by either company. I regard this circumstance as very strongly indicating the fact already stated, that Mr. Farwell at this time did not probably expect ever to be compelled to resort to the coupons for his indemnity, as almost any one who did contemplate such a resort with any degree
21 of certainty would naturally do, as the Spragues had done for ten years, and, for the reasons assigned by them, retain the city coupons, since those would be more reliable than those of the company, and since there could be no necessity of resorting to the coupons for indemnity, if the enterprise was in a hopeful way of accomplishment. But there was some motive in the difference of interest being one per cent. for the exchange; and we have no question Mr. Farwell now believes, as he testifies, that to have been the leading motive for the exchange, and it may have been so. I am certainly not prepared to find positively that it was not. But it is very apparent that if that was the leading motive, Mr. Farwell could not at that time have had any clearly-defined expectation that he would ever have to resort to the coupons for his indemnity, since the difference in the credit of the two classes of coupons in such an emergency would have more than counterbalanced the difference of interest. I do not intend hereby to qualify my former finding on this point. The form of the assignment of the Sprague claim to Mr. Farwell contains this, in addition to the general assignment of the

claim: "And authorize him to use all means in the law to collect the same in our names at his expense from date;" which clearly indicates the purpose of giving Mr. Farwell the right to pursue all the means of enforcing the claim which the creditors possessed; and this might look like a purpose on his part to pursue them all, if we did not know that he immediately discontinued all the suits, the claim itself being barred by the statute of limitations as against the original debtors; and Mr. Farwell testifies, as an excuse for letting the claim lie without any effort to collect it, that it was understood between him and the officers of the Boston, Hartford & Erie Company, at the time he purchased it, that it should be treated in an honorary way, and lie till it was convenient for that company to meet it; showing that he looked mainly if not exclusively to that company for his indemnity.

The second point requiring a statement of facts is in regard to Mr. Farwell's statements, made to the State commissioners in reference to this Sprague claim being so paid, or "taken out of the way," that it could never come against any of the property forming the line of railway from Boston to Fishkill, and which it was the purpose of the Boston, Hartford & Erie Company, and of the commonwealth, at the time, to have specially accomplished. There is the clearest and the most abundant proof in the case that Mr. Farwell and all the officers and agents of the Boston, Hartford & Erie Company applied to by the commissioners for information on the subject during their investigations, with the knowledge and concurrence of Mr. Farwell, asserted the fact to the commissioners, in various forms of expression, that the Sprague claim was really so settled and cancelled that it could never come against the Boston, Hartford & Erie Company or any of their property. It is not important to report the forms of expression used to convince the commissioners that such was really the fact. The Hon. Emory Washburn, one of the commissioners, in addition to what has been already stated in regard to Mr. Farwell's statements on the subject, testifies that Mr. Farwell procured the statement and affidavit of Thomas E. Graves,
22 esq., employed by the Boston, Hartford & Erie Company, as agent, attorney, and counsellor, wherein it was stated and sworn by said Graves that the claims of A. & W. Sprague, "are all paid and taken up in the interest of the company, the Boston, Hartford & Erie," wherein also the said Graves also deposes, in reference to the outstanding debts of the Hartford, Providence & Fishkill Company, a list of which is embraced in his affidavit, including the Sprague debt, "My judgment and belief is, that there is not over six thousand dollars of the whole claims can or ever will be collected out of the Boston, Hartford & Erie Company, or from any estate in its possession." Mr. Washburn states that, upon the force of this affidavit, the commissioners reported to the governor and council that the Sprague debt was cancelled and paid, and placed the report, in manuscript, in the hands of Mr. Farwell to carry to the governor and council, and which thus became the basis of the grant of funds from the commonwealth. Mr. Graves also gave another statement, wherein he explained how the six thousand dollars is made up, so that Mr. Washburn concludes, "We have it from Mr. Graves three times, that those debts (meaning the Sprague debt) had been paid by the corporation." This was well known, and in fact procured by Mr. Farwell. These statements were made at different times, from early in the spring to late in the year 1868 or into 1869.

The defendant Farwell's explanation of the ground why these statements were made is, that at the time he supposed the Sprague claim was abundantly provided for by the collaterals which he held, including the

coupons. And Mr. Graves makes the same explanation. And both of them seem to think now that the coupons were then relied upon as one mode of enforcing the ultimate payment of Spragues' claim. How far that view is consistent with the statement that the Sprague claim could never be made an incumbrance upon the property or line of the Boston, Hartford & Erie Company, is a matter of which the court will be able to form an opinion from the condition of the property of the Hartford, Providence & Fishkill Company and the resort which will have to be made in order to enforce the payment of the coupons, and which this proceeding is brought to hinder Mr. Farwell from doing. At the time the Boston, Hartford & Erie Company purchased the property and franchises of the Fishkill Company the possession of that company's road had gone into the hands of the trustees holding the mortgage of which these coupons form a portion. The Berdell mortgage contains a provision for purchasing all mortgage bonds upon any portion of the line, by substitution of the Berdell bonds. But that has never been accomplished in regard to the mortgage bonds of the Fishkill Company, nor has the Boston, Hartford & Erie Company been able in any other mode to pay and redeem these bonds and annexed coupons, of which the coupons in question form a portion, as by the terms of the purchase it was bound to do; and consequently that road continues in the possession of the trustees to the present time. But it forms a portion of the line and of the property of the Boston, Hartford & Erie Company, and will ultimately come into their possession if they are ever able to carry into full operation the very enterprise which was in the contemplation of the commissioners at the time they made their report to the governor and council, that the Sprague debt was paid and no longer an in-
23 cumbrance upon any property of the Boston, Hartford & Erie Company, or ever could become so. If, therefore, these coupons are now allowed to be enforced under the mortgage of the Fishkill road, it would seem in conflict with the natural import of the statements made by Mr. Farwell and Graves, upon which the commissioners' report was based, so far as the Sprague claim was concerned.

There is another fact in this connection which is now very much relied upon as evidence, that Mr. Farwell, in making these statements and procuring others to justify the same, did not intend to have the commissioners understand that he had relinquished his claim upon the coupons, or his right ultimately to resort to them for the enforcement of the Sprague claim to that extent, which is, that in stating to the commissioners the amount due upon the Fishkill mortgage, it was fixed at the amount of the bonds or notes outstanding, and an arrear of unpaid interest of $170,000, which embraced the coupons in question; so that in fact these coupons were really represented to the commissioners as outstanding and unpaid; and that is unquestionably the fact. But there is no evidence or reasonable ground to presume that the commissioners were made to understand that $84,000 of the $170,000 was made up of coupons held by the Spragues as collateral security for their claim, and which Mr. Farwell still claimed to hold as collateral security for the same claim, and to enforce them against the Fishkill Company's property, as a means of re-imbursing himself for the money to that extent, which he had paid out to obtain the assignment of that claim to himself. That would have been seen and felt by Mr. Farwell and Mr. Graves to be wholly inconsistent with the representations they were making to the commissioners in regard to the Sprague claim having been paid or settled in such a manner that it could not in any event come against the Boston, Hartford & Erie Company or any of their

property; which was equivalent to saying it could never, in any form or to any extent, be asserted against the Fishkill Company or their property. For if that could be done, it was the same thing as asserting it against the Boston, Hartford & Erie Company or their property, because the latter company had assumed to pay all the debts of the former company, and had acquired all its property. The statement, therefore, made to the commissioners, that the Sprague debt was so paid or removed that it could never be asserted either against the Boston, Hartford & Erie Company or its property, upon any fair and honest construction, means the whole Sprague debt. And if the whole Sprague debt was extinguished and taken out of the way, so that it could never be asserted either against the Fishkill Company or the Boston, Hartford & Erie Company, or the property of either company, then these coupons were thereby extinguished, since an equal amount of the Sprague debt to the coupons, about $84,000, was for the payment of these same coupons, and the coupons were only held by the Spragues as collateral security for this portion of the debt. When, therefore, the debt was wholly paid as to the debtor, and all standing in the place of the debtor, the collaterals would belong to them, and should not, upon the basis of these statements as to the payment of the Sprague debt, have been embraced in the $170,000 of unpaid coupons. Hence the defend-
24 ants' counsel claim that these statements were really qualified at the time to the extent of these coupons. But it is very evident it was not intended the commissioners, or the governor and council, should understand any such reserve was made in regard to the right to enforce more than half of the Sprague debt in this indirect manner against the property of the Boston, Hartford & Erie Company. The inquiry then naturally arises, how this $170,000 of unpaid coupons came to be reported to the commissioners, and thus to embrace those now in question. This statement was made up by Mr. Bartholomew, one of the trustees under the Fishkill mortgage, from the books kept by the trustees, by taking all the coupons which did not appear by the books to have been presented to the trustees and cancelled, amounting to $205,000. This was while the coupons in question were in the hands of Sprague, and embraced the $14,000 afterwards surrendered to the Boston, Hartford & Erie Company, as belonging to them. But Mr. Bartholomew did deduct $5,000 of coupons which he knew to be in the hands of parties having no legal claim to enforce them against the company; and he also deducted $30,000, being the amount of the coupons of the cities of Hartford and Providence, on the ground that the Fishkill Company, as he claimed, furnished the money to pay them; and he testified in this case that he might, on the same theory, have deducted some $56,000 or $57,000, embracing the $14,000 and the $42,000 which the Spragues had paid to other parties than themselves, but which the trustees claimed they had paid with money furnished them by the Fishkill Company for that particular purpose; but as they claimed otherwise, he chose to take a safe course, and did not deduct them. Mr. Graves afterwards stated to the commissioners that this claim for unpaid coupons was placed too high; that, deducting the $14,000 that had then been surrendered, or agreed to be surrendered, and some others which he knew could not be enforced against the company, it could not exceed $150,000; and in March, 1870, in stating the case at the state-house, in an argument, he treated the $84,000 held by Sprague as cancelled; but it does not appear that Mr. Farwell assented to this statement, and it does appear that he found fault with Mr. Graves for some of his statements on that occasion.

The master would desire to make the present grounds assigned for making the statements to the commissioners consistent with entire good faith in making such statements; but there is no satisfactory evidence which seems consistent with entire good faith towards the commissioners, unless we adopt the theory that Farwell did not at this time expect to rely upon or ever enforce the payment of coupons now in question. For if they were made on the basis that the coupons secured that amount of the Sprague debt, and that the balance was secured by the "debt stock," it would still involve, as we have before stated, the practice of deception upon the commissioners. For it is no answer to that charge to say that as much was added in one deduction as was deducted in the other. There would still be deception and imposition towards the commissioners. If, therefore, it is attempted to excuse Mr. Farwell from all perversion or glossing of the facts which were presented to the commissioners, we must suppose that he regarded the Sprague debt as abundantly secured by the "debt stock," and was willing to rely solely upon that, which he might properly do consistently with his statements, as that was not reckoned in any form among the assets of the company, and would not involve any lien upon or proceeding against the property of the company. The master feeling bound, in all cases of doubt, to adopt the construction of the testimony which makes most in favor of sincerity and fair dealing, is disposed to believe that such was the fact, probably, at the time, and that he did not then intend ever to resort to the coupons for indemnity. But Mr. Farwell made no declaration specifically to that effect, and it must be referred to the court how far his statements, when understood in this sense, will affect his right to retain these coupons as collateral security for the payment of the Sprague debt, which Sprague clearly had the right to do.

There is one view of Mr. Farewell's statements made to the commissioners which his present testimony seems to favor, so far as one can feel any assurance that he now really knows what his intentions then were; and that is, that the commissioners being more specially anxious to remove the Sprague claim on account of the incumbrances connected with it, and because there was no specific provision made for the absorption of floating debts in the Berdell mortgage, as there was in regard to the other mortgages upon the line, that therefore he should accomplish the substance of the desire of the commissioners, by procuring the assignment of that claim to himself, and relinquishing the attachments upon the property, and all other incumbrances created upon it in the hands of Sprague, except the coupons, and thus transferring all lien retained for the enforcement of that claim against the Boston, Hartford & Erie Company or its property to that class of debts provided for under the Berdell mortgage, in regard to which the commissioners were less solicitous, and on account of which, being increased or diminished by the amount of these coupons, they would not be materially affected in the certificates or reports which they were required to make from time to time to the governor and council in order to secure the continuance of the State aid. One great objection to adopting this view of the fact is, that there is no evidence of any statement or act by any of the parties concerned in the transaction, and made or done at the time, which would indicate any such view or purpose then entertained. And it is so easy for the purest and the most intelligent persons, after they come to entertain particular views of transactions, by dwelling and reflecting upon them, to convince themselves that they have always entertained them, that such testimony is always unsatisfactory, however fully one may be convinced, as the master is in this case, of the entire sincerity of the witnesses. It seems

more natural and more just, and more likely to reach the entire and exact truth of the case, to suppose that all these statements made to the commissioners were made at the time in the most perfect good faith and sincerity, and without any mental reservation whatever, and because the parties, both Mr. Farwell and Mr. Graves, had no expectation that it would ever be desirable to make any resort to these coupons in order to re-imburse the money paid out for the Sprague claim.

The third ground upon which it was urged before the master that Mr. Farwell ought not to be allowed to retain these coupons was, that
26 from the time he became the purchaser of the Sprague claim until late in the year 1869, he had the control of large sums of money of the Boston, Hartford & Erie Company, and must be presumed to have retained any sum justly his due from the company. The company had no considerable amount of money on hand, and do not appear to have kept any bank account, until the 21st of July, 1868, when Mr. Farwell received from the New York & Erie Company $2,000,000 in money, by way of checks, and $1,570,000 in acceptances, in part payment of the $4,000,000 agreed to be paid for $5,000,000 of the Berdell bonds. The commissioners could not find any account of the payment of the remaining $430,000; but it now appears that Mr. Eldridge's remittance of $400,000 to Farwell or his company was on that account. The $2,000,000, and the avails of the acceptance, when paid, were deposited in the name of the Boston, Harford & Erie Company at the date of reception by Mr. Farwell. But he and his company drew out, through the agency of Mr. Hall, the treasurer, a member of the Farwell company, such sums as it was deemed expedient by Mr. Farwell to use for any purpose, but mostly for the purpose of operating upon the stock-market in regard to the stock of the Boston, Hartford & Erie Company, in order to raise the price. This fact became known to the commissioners, and they remonstrated with Mr. Farwell and some of the other directors against this use of the money of the company, as being hazardous and unlawful. They could obtain no satisfactory assurance from Mr. Farwell or the other directors in regard to the discontinuance of this use of the money, and one of the directors told them, in the presence of Mr. Farwell, that the directors "regarded it as a piece of impertinence on our (the commissioners') part to ask them what they were doing with their money." The commissioner adds, "They declined to tell us where the money was." The commissioners were required to certify that the work on the road, to twice the amount of State aid obtained from time to time, had been done, and that the company continued to have the means of completing their road. Mr. Farwell told the commissioners that certain persons which the witness, Governor Washburn, thought he designated as "the ring" (but of this he was not sure) were operating upon the stocks of the Boston, Hartford & Erie Company, with a view to raise the price. He told them "who the persons were that were using the money for stock speculations." The commissioners finally gave the required certificate to the governor and council, upon condition that the directors should satisfy them that the money was safe, and "would be used by the road." For this purpose the directors, in addition to their assurance that the money was in responsible hands and would be refunded to the company, executed a bond to the Commonwealth in the penal sum of $2,000,000, conditioned that the Boston, Hartford & Erie Company "shall collect and receive the whole of said sum of $2,000,000 from the persons to whom it is now lent, and also from any and all other persons or parties to whom the same or any part thereof may be lent hereafter, so that the same shall actually be had in possession by said com-

pany and available for use in the construction and equipment of said railroad from Boston to the Hudson River, as the same may be needed," or else refund to the Commonwealth all sums advanced
27 from the date of the bond, the 11th day of March, 1869, to the 1st day of April, 1870. Before this the commissioners had acted, with some reluctance and frequent remonstrances as to the mode in which the money was being used, upon the assurances of Mr. Farwell, that the money was loaned to responsible parties, and would be sure to be refunded whenever it was required for use by the company. Governor Washburn expresses the terms of the security required by them to be, "that the money should be forthcoming whenever it is wanted for the benefit of the road." "We told him (Mr. Farwell) we did not think that was a proper way to use the money; that we thought it ought to be saved for the purposes of the road." Governor Washburn got the impression A. G. Farwell & Co. had a considerable part of the two millions, and the assistant treasurer, Barry, held their memorandum for $530,511.40. The operations in stock were carried on during considerable portions of the year 1868 and 1869 in the name of Mr. Farwell, but as he considered it "in the interest of the company," and at the close, in rendering the account of A. G. Farwell & Co. with the Boston, Hartford & Erie Company on file among the evidence, he charged the loss of stock speculations to the latter company, being $605,431.30 net loss, above interest and commissions, which were deducted, being $109,748.49. There is no doubt Mr. Farwell acted in the utmost good faith, and as he considered most for the interest of the company, in all these transactions. How far he was legally justified in any such course does not come within the range of the reference. Mr. Farwell seems to have a very decided impression now that the commissioners and the bond required of the directors to apply all the money received of the New York & Erie Company to the construction and equipment of their road; and that seems to have been in the main a correct view of the matter. But he did not seem to have been very much influenced by that impression while a large portion of the money was adventured in stock speculations; and the statement of Barry, the assistant treasurer, shows that $418,553.46 of the $2,000,000 was paid out on account of floating debts of the Boston, Hartford & Erie Company. The master entertains no doubt that, if Mr. Farwell had desired it, he might have had enough of the money in the treasury, after he purchased the Sprague claim, applied to the payment of it. But he did not desire that, so long as he regarded that claim, or what he paid for its purchase, as well secured; and when he discovered that the security of the stock upon which he had chiefly, if not exclusively, relied, was becoming insufficient, it was too late to obtain any money from the company. So that in fact there is no evidence in the case that any money of the Boston, Hartford & Erie Company was ever applied to re-imburse Mr. Farwell for what he paid in the purchase of the Sprague claim, and no ground for making any such inference or presumption, but the utmost certainty that none of the money of the Boston, Hartford & Erie Company ever was so applied. The reason why this was not done will appear more clearly under the next head in the report.

It may be proper to state here, that near the close of the cross-examination of Mr. Farwell, the counsel for the petitioners proposed to show by him that he had received large sums of money of the Boston, Hartford & Erie Company of which there was no mention upon the
28 account which he or his company had rendered. This was objected to upon the ground that it could have no bearing upon the

case, except to show the true state of indebtedness between the parties to this proceeding, which is specially excluded from the reference. Upon inquiry of the counsel of the petitioners if it was expected to show that any such money so received by Mr. Farwell had been received on account of the money paid out by him in the purchase of the Sprague claim, or specially applied, or agreed to be applied, in payment of the money so paid out by him, and learning that the evidence was offered with no such expectation, but only as a basis of presumption, that having the money he would naturally, or should, have so applied it, the master rejected the evidence, there being already such an abundance of evidence, wholly uncontradicted, to the same points, and this additional evidence could only be important in regard to Mr. Farwell's indebtedness to the Boston, Hartford & Erie Company. On re-examination the counsel for defendant proposed to ask Mr. Farwell if he had repaid all these additional sums received outside of his account; but the master held that inquiry irrelevant, so long as the evidence to which it referred had been ruled out, and excluded this also. These questions are reserved for the court, if either party desire to revise them.

The fourth ground upon which it was claimed Mr. Farwell could assert no claim to the coupons was, that he had lost all claim upon the Boston, Hartford & Erie Company or the Fishkill Company for the reimbursement of the money paid out by him in the purchase of the Sprague claim, on account of the manner in which he had dealt with the "debt stock" in his hands as collateral security, he having thereby made the same his own, in payment of his claim. In addition to what is before stated in regard to this "debt stock," it may be proper to state more explicitly than I have before done, that the directors of the Boston, Hartford & Erie Company treated their 7349 shares of stock in the same light after the time expired for exchanging it for the floating debts of the Fishkill Company as before, viz, as a trust fund, set apart for the payment of these debts. On the 14th day of August, 1867, while the matter was pending in the Superior Court of Connecticut, as before stated, the board of directors voted, "that the president (Mr. Eldridge then) is authorized to use the stock in the hands of Geo. W. Bartholomew and others, trustees, to buy any claims existing against the Hartford, Providence & Fishkill Company, upon such terms as he may deem just and proper." And on the 20th of July, 1868, the board of directors voted that Eldridge, Farwell and Converse act as a committee to accept from the former trustees the transfer of this "debt stock" and to give them proper indemnity against all future responsibility to any party, and to hold the same "as trustees" "subject to the order of this company." The stock was transferred to these persons on the 7th of November, 1868, in pursuance of the order of the court. On the 10th of December, 1868, Mr. Farwell applied to Graves, as the general adviser of the company, and to Eldridge the president, and as having by vote of the board of directors authority to dispose of the "debt stock," in any manner he thought proper, towards the ultimate payment of the debts of the Fishkill Company, for the purpose of having the same transferred into his
29 name. He claimed that as it was intended primarily for his indemnity for the money paid out in the purchase of the Sprague claim, it was more proper it should stand in his name than in those of the three appointed by the board of directors to hold it as trustees. The stock was then worth $26 a share and would thus produce, by sale at that price, some $40,000 more than enough to repay all that he paid out to purchase the Sprague claim and the others bought in connection with

it. Both Graves and Eldridge urged upon Farwell the propriety of an immediate sale of the stock, and the repayment of the money advanced by him on the credit of it, and for which it was regarded as pledged. Mr. Farwell objected to its being sold at that time, both on the ground that it would ultimately bring more, and also that putting so large an amount upon the market at once, might injure its credit, and reduce the price of the stock. Mr. Farwell was firm in resisting the sale, but insisted it should be conveyed to him as collateral security for the money advanced by him to procure the Sprague and other claims. The stock was accordingly conveyed to him "as trustee;" but neither he or Eldridge or Converse could explain the exact force of the word "trustee," in the conveyance to Farwell, or that he held it as trustee for any one except himself, until his claim was paid. Farwell said he regarded it as conveyed to him as collateral security for his claim. There is no doubt Eldridge and Graves urged the sale of the stock at the time, and the immediate payment of Mr. Farwell's claim, as much and as long as they deemed it hopeful for attaining any such result. Graves testifies that after the stock was conveyed to Farwell, on the 10th of December, 1868, although not present at the final arrangement between Eldridge and Farwell, he supposed of course that Farwell's claim was finally arranged, and that this was the ground of his statement, at the State house, March 10, 1870, that the claim was paid and the coupons released and in the possession of the company, cancelled. He assumed, he testifies, that Mr. Farwell having the stock, with permission to sell, would of course do so, and pay himself. Mr. Eldridge testified, "I wanted the stock sold," and gives no intimation that he ever changed his mind, or consented that it should not be sold, except so far as his silence and ceasing to urge the sale might imply that. Mr. Farwell in his testimony insists that there was a distinct understanding, at the time he took he stock, that it should not be then sold; but when pressed to state who said so, his reply is, "I said I did not want it sold, and they agreed it should not be sold." He kept the stock without making any effort to dispose of it till, as Mr. Farwell expresses it, the road was "going into the hands of receivers, and lawyers were thick about the court-rooms. I thought the stock ought to be sold;" and it was sold for $4, or about $4, a share, the most that then could be obtained for it. The avails were not carried to the credit of any account, Mr. Farwell saying he was in doubt whether he had pursued the legal course in selling it without giving the company notice, and did not know but he might be required to replace the stock. There is no doubt Mr. Farwell understood he had the consent of Mr. Eldridge to sell it immediately, when he took it, indeed that he desired it. And Converse, the remaining trustee, testifies, that when he signed the transfer to Farwell he did it upon the assurance that he was going to take it in payment or settlement of his claim for money paid out on the Sprague and other claims at Providence. But Converse did not obtain his information from Farwell, but from Eldridge; and the latter does not testify to any such agreement.

There can be no question, Mr. Farwell had the consent and authority of Eldridge, the president, and of all the trustees appointed to hold this stock, and of all the directors and advisers of the company who took any part in the transaction to sell the stock, and that he understood they desired it done immediately. But Eldridge knew he was determined not to sell at that time. There is one point, depending somewhat upon facts, which might be presented more fully: the reason assigned by Mr. Farwell for not selling earlier. The master does not recall any

testimony upon this point, except what is before stated, that he thought such a sale would injure the credit of the company by offering so much stock at once, and that he thought it would bring more. But he was all the time buying and selling these stocks from early in the fall of 1868 to late in the year 1869, and into 1870, and even later; and to the amount of a million dollars or more, as the broker testifies. So there could not have been great difficulty in getting rid of 7349 shares of the stock when the price was up to $26, if one had no other purpose in view but to convert the stock into money and pay the claim. And the probability of the price going higher was very doubtful, to say the least; Mr. Farwell probably expected it would. Mr. Farwell also testifies that he considered himself under an honorary obligation not to press this claim. How far he would be released from any such obligation at the time the stock was conveyed to him in December, 1868, and he urged to sell at once in payment of this claim, by the very party who gave him all the rights he had or ever had over these stocks, is not a question referred to the master. It must be confessed that upon close inspection these reasons for not selling appear scarcely plausible. The master is inclined to believe, that the more prevailing ground of delay was that Mr. Farwell regarded the claim as abundantly secured by the "debt stock," and was confident of maintaining the price of the stocks at such a point as would render it secure, until the pressure overwhelmed the barriers in which we had trusted, and all went down with a rush. It is always more or less difficult to know precisely how any man would have acted under different influences; but judging from the common course of the conduct of prudent men under similar circumstances, it would scarcely require much of the gift of prophecy to be able to conjecture, that if Mr. Farwell had felt no interest in bringing the stock up to a higher price in the market, in short if he had no other interest but to collect his debt when he had collaterals in hand, with permission to sell immediately, and when the collaterals at the market price would bring more than enough to pay his whole debt, that he would not have delayed very much longer than was absolutely necessary to make the sale effective in the full payment of his claim. How far he was justified, under the circumstances, in delaying the sale on the ground of conjectural advantages to other parties, is not a question in regard to which the master can afford any further aid as matter of fact.

31 There are some special matters which require statements. The claim of the defendants, Long and Watson, to the $15,000 of the coupons of the city of Providence, is based upon the unquestioned fact that Mr. Farwell was indebted to them at the time in a sum exceeding the amount of the coupons, and they were pressing him for payment or further security. He gave them these coupons as collateral security, to be collected by them and applied in payment of his debt. He assured them the coupons would be paid on presentment, but they were not, and a suit is now pending in the United States circuit court, in favor of Long and Watson, for the recovery of the amount. The cause has been heard, and is now in the hands of the judge for decision.

Both Watson and Long testify that they took the coupons as collateral security for what Farwell owed them, and which they did not deem sufficiently secured. There is no doubt, from the evidence, that these defendants accepted these coupons upon the expectation that they would give them security for their claim to that amount; and that they acquiesced in giving Farwell further indulgence on the basis of this expectation, so that they really held the coupons upon sufficient consideration, both of injury to themselves and benefit to Farwell. But it does

not appear that the coupons were to be applied as payment or even conditional payment, upon what Farwell owed them, until collected. The testimony is very explicit from the defendants themselves upon all these points, and may be read in connection with this portion of the report, if either party desires it. Long and Watson both knew, at the time they took the coupons, that they had been due more than ten years. But they testify that they did not regard this as any impeachment of the credit of this class of securities, and that they had taken similar securities of a date as old or older. But they were not able to say that they had ever known anything like this amount of a single date, or two different dates, offered in the market so long a period after falling due, but said they should not regard it as any ground even for making inquiry. The master is inclined to believe that most careful and experienced men, in making an absolute purchase of coupons under these circumstances, would have made inquiry how the payment came to be delayed so long. But how far one is bound to do so, and the effect of accepting them without inquiry, are not questions of fact beyond the point of good faith; and the master finds no satisfactory evidence in the case that these defendants did not accept the coupons, hoping and probably expecting to be able to collect them. How far they might have exercised more circumspection, if they had been called upon to make large advances upon or to have purchased these coupons at the par value, it is probably not indispensable to determine; and if it were, the evidence in the case would afford no very certain ground to act upon. The probability is, that they might have been more circumspect under such circumstances. But under the present circumstances the master regards these defendants as having taken these coupons for value and bona fide, except so far as any of the special finding may be inconsistent with that view.

32 SUMMARY.

The master has thus traversed the wide space embraced in the evidence taken before him. The result of all his finding of facts in the case seems to be, so far as the title to the coupons in Mr. Farwell is concerned, that the Spragues had a clear right to retain them until they were paid the amount of their charges on account of the money advanced to redeem their coupons. Mr. Farwell by his purchase and assignment of the claim acquired all the rights in and title to the coupons which the Spragues had, so far as he elected to exercise them. From his accepting the delivery of the coupons and retaining them at the time of the assignment of the claim, while other coupons not held by the Spragues as collateral were surrendered to the company, it is considered that he did at that time elect to hold the coupons as collateral security to the extent of his right. There is no evidence that he ever voluntarily and expressly relinquished or abandoned that claim or right, unless what passed at the time of obtaining State aid for the company is to be received in that light. He did, intentionally, and for the purpose of obtaining a greater benefit for the company and incidentally for himself, state, or procure others to do so, to the commissioners, and through them to the governor and council, acting in behalf of the Commonwealth, that the Sprague debt was paid, and all securities thereby existing released, which could in any event be enforced against the property of the company; and this must be regarded as embracing these coupons, and upon the basis of this statement and the belief in its entire truth, the Commonwealth made large advances to the company by way of loan. Mr. Farwell at this time had a lien upon 7,349 shares of the capital stock

of the company, which on the 10th of December, 1858, was worth in the market $26 a share, and if sold would have produced more than enough to repay him all the money advanced to purchase the Sprague claim. He was at the time of the transfer to him of these shares, authorized and requested to sell and convert them immediately into money, in payment of his claim, by those empowered to act on behalf of the company; but he omitted to do so until the price of the shares had fallen below $5, when he sold them for all he could obtain in the market, about $4 a share.

He has since transferred, for valuable consideration and in good faith, to the other defendants $15,000 of these coupons, who still retain them upon such consideration and in like good faith. This summary of facts is made, subject to all the special findings herein before stated, and without intending hereby to contradict or qualify the same, but only to give the general results. All the testimony taken down by phonographic reporters, in nine volumes, together with all the exhibits filed in the case, are hereby returned to the court, to enable it to revise the finding of the master upon any point where either party may desire it.

ANSWER TO SPECIAL REQUESTS.

The master finds the following facts in answer to special requests of the counsel, either in the argument or in writing since:

33 The Boston, Hartford & Erie Company never made any demand upon Mr. Farwell for the surrender of the coupons in question, until about the time of instituting these proceedings on the 21st of May, 1871. The coupons sold to Long and Watson by Farwell were cut from bonds of the city of Providence, issued for the benefit of the Hartford, Providence & Fishkill Company, which bonds have not yet matured.

I understand from the testimony in the case, that there is no obstacle to the Boston, Hartford & Erie Company coming into full possession of the line and property of the Fishkill Company, so soon as the former company is in condition to meet all the indebtedness of the latter company in compliance with the conditions of the purchaser.

There is a provision in the contract of purchase just referred to, whereby the debts of the Fishkill Company, when paid or assumed by the *the* Boston, Hartford & Erie Company, are to be assigned in blank, and such of them as were taken up by Mr. Bartholomew, while acting as trustee for holding the "debt stock," were so assigned. This provision is claimed by the plaintiffs' counsel to have been created for the protection of the title of the Boston, Hartford & Erie Company to the property of the Fishkill Company.

All of which is respectfully submitted.

ISAAC F. REDFIELD,
Special Master.

BOSTON, *Novemler* 15, 1871.

And the petitioners by their attorneys filed their exceptions to the master's report, as follows, to wit:

Exceptions taken by said petitioners to the report of the honorable Isaac F. Redfield, the special master, to whom the said cases were referred by order of this court, bearing date this twenty-seventh day of September, A. D. 1871.

Said petitioners except to said report in the particulars following, to wit:

1st. For that said master has in and by said report certified, that he

finds that A. & W. Sprague had a clear right to hold the coupons ar collateral security for the payment of the Sprague debt, and that theis claim to hold them as collateral security was well founded; whereas the master ought to have found and certified, that the Spragues did not hold or have a right to hold any of said coupons as collateral security for said debt.

2d. For that the said master has in and by said report certified, that he finds that said Farwell acquired all the right and title to the coupons which the Spragues had; whereas he ought to have found and certified, that said Sprague debt was paid by the Boston, Hartford & Erie Railroad Company, and that said Farwell as agent of said corporation procured said debt to be assigned by the Spragues to him, but, in fact, in trust for said corporation, and that he acquired no right to hold or use said coupons adversely to said corporation, nor to transfer or part with them except to said corporation or its representatives.

34

3d. For that the said master has in and by said report certified, that he finds that said coupons were delivered to said Farwell concurrently with the assignment of the claim to him, and he has retained them ever since; whereas he should have found and certified, that said coupons were surrendered to said Farwell, as agent of and in trust for said corporation, and have ever since been retained for and by said corporation.

4th. For that said master has in and by said report certified, that he finds that said Farwell at the time of receiving the coupons from the Spragues, did elect to hold them as collateral security, and that said Farwell relied upon said coupons as collateral; whereas he ought to have found and certified, that said coupons were surrendered by the Spragues for the Boston, Hartford & Erie Railroad Company as belonging to them, and that said Farwell never relied upon said coupons as collateral security, or elected to hold them as such; and that even if said Farwell did so elect, he afterwards relinquished such intention by his assurance to the State commissioners, for the purpose of obtaining State aid for said corporation, to the effect that the Sprague debt was paid and all securities therefor discharged, which could have been in any event enforced against the property of the corporation, and on the faith of which assurance the Commonwealth of Massachusetts loaned said corporation large sums of money upon the Berdell mortgage bonds as security, and which they still hold.

5th. For that said master has in and by said report certified that he finds that upon the representations of said Farwell, the Commonwealth of Massachusetts made large advances to the Boston, Hartford & Erie Railroad Company, and should have also found and certified that he found that said loans were made upon said Berdell mortgage bonds as security, and said Commonwealth still holds said bonds as security for said debt to it which is still unpaid.

6th. For that the said master in and by said report certified that he finds that none of the funds of the Boston, Hartford & Erie Railroad Company was ever applied to pay the Sprague claim; whereas the said master ought to have found and certified that said claim was settled and paid by said Farwell as agent or trustee for said Boston, Hartford & Erie Railroad Company with funds of said corporation in his hands.

7th. For that said master in and by his said report certified that he finds that it seems that said Farwell made no inquiry in regard to this money, (the $225,000,) and did not at the time he purchased the Sprague claim, on the twenty-seventh day of May, A. D. 1868, know that the money belonged to the Boston, Hartford & Erie Railroad Company;

whereas he ought to have found and certified that said Farwell did know on said May 27, 1868, that said $225,000 did belong to said Boston, Hartford & Erie Railroad Company, and applied or ought to have applied the same to pay for said Sprague claim.

35 8th. For that said master has in and by said report certified that he finds that Converse did not obtain his information from Farwell, but from Eldridge, that Farwell was going to take the 7,349 shares of stock in payment or settlement of his claim for money paid out on the Sprague and other claims at Providence, whereas he should have found in qualification of such finding, and have certified, that said statement to said Converse was made in the presence of said Farwell.

9th. For that said master has in and by said report certified that he finds that there was no evidence that said Farwell ever voluntarily or expressly relinquished his claim to hold said coupons as security, unless as set forth in said report; whereas he should have found and certified that if he found that said Farwell ever had any right or claim to said coupons, which right or claim is denied by the petitioners, then that said Farwell did relinquish the same.

10th. For that said master has in and by said report certified that there is no evidence that said Farwell ever voluntarily or expressly relinquished his claim or right to hold said coupons as collateral security unless as set forth in said report; whereas he should have found that if he found that said Farwell ever had any right or claim to said coupons, which right or claim the petitioners deny, the same was extinguished by the transfer of said 7,349 shares of stock to him, and that said Farwell, by said transfer, and his conduct in respect thereto and to said stock, was precluded and debarred from making any claim to said coupons.

11th. For that said master has in and by said report certified that he finds there is no evidence that said Farwell ever voluntarily and expressly relinquished his claim or right to hold said coupons, unless as set forth in said report; whereas he should have found, and certified that he found, that if he found said Farwell ever had any claim or right to said coupon, which claim or right the petitioners deny, then that said Farwell accepted said 7,349 shares of stock in payment or settlement of his claim, if any he had.

12th. For that said master in and by his said report should have found that if said Farwell ever had any claim or right to said coupons, which right or claim the petitioners deny, and did not accept said 7,349 shares in payment or settlement of his claim, then that he accepted said 7,349 shares as security in the place of said coupons.

13th. For that said master has in and by said report certified that said $170,000 unpaid interest embraced the coupons in question, so that, in fact, these coupons were really represented to the commissioners as outstanding and unpaid; whereas he ought to have found and certified that said $15,000 coupons of bonds of the city of Providence, and said $15,000 coupons of bonds of the city of Hartford, were not included in said $170,000.

14th. For that said master has in and by said report certified that he finds that the claims of the Providence, Hartford & Erie Railroad Company, which were taken up by Mr. Bartholomew while acting as trustee for holding the "debt stock," were assigned to him in blank; whereas he should have found, and certified that he found, that the said claims were assigned into said Bartholomew's own name.

36 15th. For that the master has in and by said report certified that he finds that said Farwell acted in the utmost good faith,

and as he considered most for the interest of the company, in all these transactions; whereas he should have found and certified that said Farwell was acting for his personal interest, as distinguished from the best interests of said Boston, Hartford & Erie Railroad Company.

16th. For that said master has in and by said report certified that he finds that said George W. Long & Company took the said $15,000 coupons of bonds of the city of Providence from said Farwell in good faith and for a valuable consideration; whereas said master should have found and certified that said George W. Long & Company did not take said coupons in good faith and for a valuable consideration; and should also have found and certified that they took the same with notice of all existing defects in Farwell's title.

17th. For that the said master has in and by said report certified that there is no doubt, from the evidence, that Long & Company accepted the $15,000 in coupons of the city of Providence, with the expectation that the coupons would be security for their claim to that amount, and that they acquiesced in giving Farwell further indulgence on the basis of this expectation; whereas he should have found and certified that Long & Company received said coupons from said Farwell to be collected, and the proceeds, when collected, to be applied toward the pre-existing debt due from Farwell to them, and that they received said coupons upon no new consideration.

18th. For that said master should have found, and certified expressly and in terms, that the petitioners are entitled to said coupons and to the possession thereof.

19th. For that said master should have found, and certified expressly and in terms, that the respondents have no right or claim to said coupons or any of them.

By their attorneys,

BROOKS & BALL.

And the respondents, by Browne & Holmes, esq'r's, their attorneys, filed specifications as follows, to wit:

The respondents in the above-entitled causes, in accordance with the terms of the order of reference therein, respectfully request the master to report to the court the evidence in said causes upon which he has found, in his report of facts, the facts hereinafter specified, viz:

1. That the respondent Farwell unquestionably might have learned the fact that certain money deposited with the firm of A. G. Farwell & Co. by John S. Eldridge, in the name of said Eldridge, of which, on the 27th of May, 1868, there remained in the hands of said A. G. Farwell & Co. $225,000, belonging to the Boston, Hartford & Erie Railroad Company, if he had asked Mr. Eldridge.

37 2. That he might probably have had enough of said money applied to pay the Sprague claim, if he deemed it expedient.

3. That he did not deem it expedient so to do, but thought it more prudent to purchase said claim himself and have it secured in the mode it was.

4. That said Farwell, after said purchase, caused the entry "settled" to be made in a suit then pending in Rhode Island against the Providence, Hartford & Fishkill Railroad Company, or knew that said entry was made until the trial of the suit of Long et al. vs. The City of Providence, in June, 1871.

5. That said Farwell ever did wholly forego all purpose of ultimately relying upon the coupons in suit, provided all other security should fail.

6. That the bank-account of A. G. Farwell & Co., from which he drew the $135,000 he paid the Spragues in purchase of their claim, was in fact at that time increased by the amount of the $225,000 so standing to the credit of John S. Eldrige as aforesaid.

7. That it was the duty of the Providence, Hartford & Fishkill Railroad Company, and of the Boston, Hartford & Erie Company as their successors, to exchange with the city of Hartford the coupons of said city for the coupons of said railroad company whenever said city coupons had been actually paid and taken up by either company.

8. That said Farwell discontinued, or caused to be discontinued, suits pending in Rhode Island and Connecticut by A. & W. Sprague against said Providence, Hartford & Fishkill Railroad Company.

9. That John S. Eldridge, president of said Boston, Hartford & Erie Railroad Company, had, on the 10th day of December, 1868, or at any time after the 20th July, 1868, authority to dispose of 7,349 shares of the stock of said company known as "debt-stock" in any manner he thought proper towards the ultimate payment of the debts of the Hartford, Providence & Fishkill Railroad Company.

10. That said Farwell was ever urged or requested to sell said stock after said stock was transferred to him, or at any time, except once in a conversation between him, said Eldridge, and Thomas L. Graves, before said transfer took place.

11. That said Farwell was ever authorized or directed by any one, empowered so to act by the Boston, Hartford & Erie Railroad Company, to sell said stock and convert it into money.

12. That the avails of said stock were not carried to the credit of any particular account on the books of said Farwell.

13. That said Farwell stated or procured others to state to the commissioners, and through them to the governor and council of the Commonwealth, that the Sprague debt was paid and all securities thereby existing released, which could in any event be enforced against the property of the Boston, Hartford & Erie Railroad Company.

38 The respondents also respectfully request the master to find as a fact that the $170,000 back interest, represented by the Boston, Hartford & Erie Railroad Company to be outstanding upon the bonds of the Providence, Hartford & Fishkill Railroad Company, included the coupons here in controversy; and further request the master, if he shall not so find, to report the evidence relating to the said fact to the court.

BROWNE & HOLMES,
Solicitors for Respondents.

Thereupon the case came on for hearing upon the master's report; and after a hearing, the same was, by the presiding judge, reserved for the consideration and determination of the whole court upon the report of the master and the testimony and other evidence reported, and upon the several specifications of the respondents and the exceptions of the petitioners.

Thence the same was continued until the April term, A. D. 1872, when and where it was ordered by the supreme judicial court for the Commonwealth, by its rescript, that the clerk of this court for the county of Suffolk make the following entry under this case in the docket of said court, viz: "Plaintiffs' exceptions sustained. Decree for the receivers upon the evidence reported."

Thence this case was continued until the present term.

39 COMMONWEALTH OF MASSACHUSETTS,
Supreme Judicial Court, Suffolk, ss.:

GEORGE ELLIS ET AL.
v.
THE BOSTON, HARTFORD & ERIE RAILROAD COMPANY, ET AL. } In equity.

JAMES W. CONVERSE ET ALII, RECEIVERS, petitioners,
vs.
HENRY N. FARWELL.

JAMES W. CONVERSE ET ALII, RECEIVERS, petitioners,
vs.
GEORGE W. LONG ET AL.

To the honorable the justices of the supreme judicial court:

Respectfully represent unto your honors, Charles S. Bradley, Charles A. Chapman, and George M. Barnard, assignees of the Boston, Hartford & Erie Railroad Company in bankruptcy, that, having read the proposed decree of the court in the case of the petition of said receivers against Henry N. Farwell, ordering him to surrender and deliver up forthwith to James W. Converse, George M. Bartholomew, and J. Grahame Gardiner, receivers of the Boston, Hartford & Erie Railroad Company, the coupons of the bonds of the Hartford, Providence and Fishkill Railroad Company, and the coupons of the bonds of the city of Providence described in said petition, and the proposed decree
40 of the court against George W. Long and John C. Watson, ordering them to surrender and deliver up forthwith to said receivers the coupons of the bonds of the city of Providence described in the petition against them, we do assent to said decrees and to the delivery of said coupons to said receivers as therein ordered.

GEORGE M. BARNARD
CHARLES S. BRADLEY,
CHAS. R. CHAPMAN,
Assignees in bankruptcy of the Boston, Hartford & Erie Railroad Co.

Filed Aug. 28, 1872.

41 And now, on this fifth day of May, A. D. eighteen hundred and seventy-three, after a hearing upon the above-mentioned petition, upon the pleadings and evidence and the report of Isaac F. Redfield, special master, and the exceptions to said report and the arguments of the respective counsel, it is ordered, adjudged, and decreed that the petitioners' exceptions to the report of said master be, and the same is hereby, sustained. And it is found as a matter of fact, and further ordered, adjudged, and decreed, that Henry N. Farwell, the respondent in said petition, had no right or title to the coupons described in said petition, and which were in his possession at the time of the appointment of the receivers in the cause of George Ellis and others against the Boston, Hartford,& Erie Railroad Company and others, now pending in this court, and that said Farwell now has no right to hold the said coupons as security for any debt or claim against said Boston, Hartford, & Erie Railroad Company, and that the right to the possession and the title to said coupons is now in the petitioners, James W. Converse, George M. Bartholomew, and J. Grahame Gardiner, as the remaining receivers of the property of the Boston, Hartford & Erie Railroad Com-

pany, the other petitioner, George Talbot Olyphant, having resigned and been discharged from his receivership, and said remaining receivers having and exercising all the powers and authority, and being vested with all the rights and duties, which were by the decree of this court, made August 2nd, 1870, conferred upon, or vested in, the whole body of receivers appointed by said decree, notwithstanding the amended answer of said defendants and alleged adjudication in bankruptcy and subsequent assignment mentioned therein. Said coupons, described in said petition, which were in the possession of said Farwell at the time
42 of the appointment of said receivers, being five hundred coupons of the bonds of the city of Providence, each coupon being for thirty dollars, and due on the first day of July, A. D. eighteen hundred and fifty-seven, and the following-described coupons of the bonds of the Hartford, Providence & Fishkill Railroad Company, to wit: seven hundred and fifteen coupons due on the said first day of July, each for thirty-five dollars; one hundred and fifteen coupons due on said first day of July, each for seventeen dollars and fifty cents; three coupons due on said first day of July, each for fifty-two dollars and fifty cents; five coupons due on said first day of July, being one for one hundred and five dollars, one for fifty-four dollars and forty-three cents, one for twenty-one dollars, one for fourteen dollars, one for six dollars and thirteen cents; four hundred coupons due on the first day of January, A. D. eighteen hundred and fifty-eight, each for thirty-five dollars; one coupon due on said first day of January, for seventeen dollars and fifty cents; three hundred and eighty-four coupons due on the first day of July, A. D. eighteen hundred and fifty-eight, each for thirty-five dollars; and five hundred coupons, each for thirty-five dollars.

It is further ordered, adjudged, and decreed that the injunction heretofore ordered by this court, whereby said Farwell is restrained from making any sale, transfer, delivery, or other disposition of said coupons otherwise than to said receivers, be, and the same is hereby, continued and made perpetual, & that said Farwell surrender and deliver up forthwith to the petitioners, James W. Converse, George M. Bartholomew, and J. Grahame Gardner, as such receivers, all said coupons, and that they recover of said Farwell the sum of twelve hundred and thirty-six and $\frac{25}{100}$ dollars as costs, and that execution issue therefor.

A true record.

Attest: GEO. C. WILDE, *Clerk.*

43 COMMONWEALTH OF MASSACHUSETTS.

Supreme Judicial Court, Suffolk, ss:

GEORGE ELLIS ET AL.
vs.
THE BOSTON, HARTFORD & ERIE RAILROAD Company et al. } In equity.

JAMES W. CONVERSE ET AL., RECEIVERS,
vs.
HENRY N. FARWELL.

JAMES W. CONVERSE ET AL., RECEIVERS,
vs.
GEORGE W. LONG ET AL.

Before Hon. Isaac F. Redfield, master.

Testimony.

FRIDAY, *October* 6, 1871.

A preliminary objection was made by the counsel for respondents that the petitioners cannot maintain their petitions because of the appoint-

ment of assignees in bankruptcy of the Boston, Hartford & Erie Railroad Company and the assignment of its estate to them before; which objection being overruled, the examination proceeded.

It is agreed that the parties may refer to the decree of the supreme judicial court made August 2, 1870, in the case of Ellis vs. The Boston, Hartford & Erie Railroad Company, and the subpœna issued in that case July 20, 1870, and service thereof on H. N. Farwell (respondent herein) July 21, 1871; also the order of the court February 5, 1871, that the bill be taken pro confesso against Farwell; said decree being as printed in senate document No. 74, of 1871.

The admission of these documents was objected to by the respondents, and they were admitted subject to the objection.

44 The petitioners also put in evidence a decree of the court in the case of Ellis vs. Boston, Hartford & Erie Railroad Company, made Sept. 26, 1870, and printed on page 67 of said senate document 74, appointing J. Grahame Gardiner receiver in place of Otis Norcross.

The petitioners introduced SAMUEL CURREY, who was duly sworn, and testified as follows:

Q. (By Mr. Brooks.) What is your residence and profession?

A. My residence is Providence, R. I.; attorney and counsellor at law is my profession.

Q. You have been so for how long a time?

A. Over thirty years.

Q. Have you been the attorney of the Hartford, Providence & Fishkill Railroad Company for any length of time; and, if so, from what time to what time?

A. From the time of the union of the Providence & Plainfield Railroad Company with the Providence, Hartford & Fishkill Railroad Company, July, 1852, up to the present time, I suppose. When it went into the hands of the trustees of the bondholders, in 1858, I became counsel for the trustees and also for the railroad company.

Q. What time in 1858 did it go into the hands of the trustees?

A. Proceedings for its surrender were taken early in January, 1858. It took effect practically the first of February, 1858; it may have been the very first day; I know it was early in February.

Q. Were you aware of a contract between the Hartford, Providence & Fishkill Railroad Company and the Boston, Hartford & Erie Company August 28, 1863?

A. I was aware of such a contract.

(Testimony in respect to contract above mentioned objected to by respondents, and admitted subject to objection.)

Q. (By Mr. Brooks.) The question was, Mr. Currey, whether you knew in May, 1868, of the existence of this contract.

A. I was one of the special committee on the part of the Hartford, Providence & Fishkill Railroad to negotiate and draw it up. Mr. Graves was the principal draughtsman. I was with him, and I recognize some parts of it as my own. I knew of its being executed and carried into effect and as existing in 1868. I procured its ratification by the general assembly of the State of Rhode Island at the session of 1865.

Q. Do you know whether Mr. Farwell was at this time, in May, 1868, connected with the Boston, Hartford & Erie Railroad Company?

A. I knew him as the vice-president and a director of that corporation at that time and before.

45 Q. What, if anything, had you known in regard to the claim of A. & W. Sprague against the Hartford, Providence & Fishkill

Railroad Company, as to what it was, and what had been done with it, prior to May 27, 1868?

A. I went to A. & W. Sprague in October, 1856, the next day after the death of the late William Sprague, the president of that road; it was Monday morning, October, 1856; he died Sunday night; these gentlemen, whom I saw on Monday, came into the firm the Saturday preceding; they were the son and nephews of the deceased Mr. Sprague; Amasa and William Sprague are now living; Byron is dead.

Q. (By Mr. Browne.) Won't you give us the names of the parties who were present at this interview?

A. Byron Sprague, now deceased, Amasa Sprague, and William Sprague, survivors of that firm. I say "survivors." Byron had sold out a short time before he died. These gentlemen were the survivors of the old firm of A. & W. Sprague. Mr. Edwin Hoyt, of New York, a brother-in-law of Byron Sprague, was present, and they took his counsel in answering my proposition. No one else was present. I went on my own account, as a friend of the Hartford, Providence & Fishkill Railroad, without consultation with the officers of the road. A majority of the directors resided in Hartford and others in different places. Knowing the financial condition of the company, I went to these gentlemen to see if they would carry out what the deceased Mr. Sprague had done in his lifetime. A note for $15,000 of the Hartford, Providence & Fishkill Railroad Company had fallen due the Saturday previous, at the Phœnix Bank, Hartford, and Byron Sprague told me he had telegraphed guaranteeing that paper, so as not to have it go to protest.

Mr. BROWNE. What Byron Sprague told him is not evidence.

The MASTER. The fact that he told him he had telegraphed would not be evidence; but that would not have any detrimental effect. If they do not prove it in any other way, that would not have any weight.

Mr. BROWNE, (to witness.) The question asked you was what, if anything, you knew in regard to what was done about the Sprague account.

Q. (By Mr. Brooks.) What was this Sprague account, and what was the relation of the Hartford, Providence & Fishkill Railroad Company to the Spragues?

A. This account grew out of that informal arrangement that they made with the company. They were large stockholders and much interested in the company. I see the first charge is November 15. Prior to this the deceased Mr. Sprague had indorsed the paper, and discounted the paper for the company, carrying it along for a year or two while he was president, and they agreed verbally with me that they would do the same thing for a time. Subsequently I drew up a mortgage. They said it so positively and decidedly, that I telegraphed to Governor Trumbull and other gentlemen in Hartford, which relieved them very much. Subsequently an agreement was made between them and the directors. I told the directors what they had agreed to do, and I drew up a mort-
46 gage, giving them security on all the property of the company not covered by the bonds. They made advances, and I see here is a draft, &c., of the items of this account, growing out of this matter, except the coupon matters. How far they were connected with it I cannot now say without being specially inquired of. It continued until the 1st of January, 1858.

Q. That is, they continued to make these advances until January, 1858?

A. Yes, sir. The account ran behind that, but on that day they put an attachment on the whole road in Rhode Island and Connecticut.

Q. For what?

A. The balance of their account, which account they never filed in court. I recognize this [document] as their account. I have examined every item carefully. I don't recollect every item, but I recollect it generally as the account. I was familiar with it as it stood at that time, for I tried several times to effect a settlement of it.

Q. Was there a suit brought in Hartford also?

A. I heard there was, but I never saw the record. I knew it as well as I could know it from general knowledge and information all round.

Q. Do you know anything about their paying coupons and charging the amount into the account?

A. I know that they charged it, and I know that the trustees recognized the charge, as that they paid certain coupons on the six per cent. bonds of the city of Providence and the six per cent. bonds of the city of Hartford. They were items in the account that I received.

Q. In regard to the payment of coupons upon the mortgage-bonds of the Hartford, Providence & Fishkill Railroad Company.

A. They held bonds of that company, and I suppose as they sold them they cut off the coupons and charged them as due, by what I saw in the account. There was one whole year the company did not pay the coupons on its own bonds.

Q. What year was that?

A. I think 1858—January 1, 1858, and July 1, 1858. I think they paid some of the coupons for other parties, banks, in July, 1857; I should think they did; that is my recollection.

Q. Was that suit brought to recover the amount of that account?

A. I am under oath; I can tell all I know. The account was not filed. There was a general money count for a large amount, I think $200,000. I filed a plea in abatement, and the suit was abated by the supreme court of Rhode Island, and instead of being dismissed it was turned into a summons by order of the court, and it stood from the March term of the court, 1858, when judgment on my plea was given in my favor, abating the suit, down to the time of this settlement in 1868, just ten years, without their filing any account. I knew as counsel, by conferring with the counsel on the other side, what the account was, but it had not been filed in the court. The counsel for the Spragues,
47 were, first, Abraham Paine, and afterwards John N. Gardner. I also had a good many consultations with Mr. Bartholomew, and tried to settle it.

Q. The question is, whether this suit was brought on that account or how otherwise.

A. I explicitly understood from all parties that it was on the account.

Q. You say it was continued until the time of settlement, in March, 1868. Then what was done with it?

A. The March term extended from March down to July, I suppose. It generally does.

Q. Will you look at that record (in Sprague case?)

Mr. BROWNE. We will assume it to be regular in form.

Mr. THURSTON. It is an exemplified copy.

Q. State whether that is the record of the suit to which you refer.

A. This is the writ and service upon the two offices in two counties, my plea in abatement, agreements signed by myself and Mr. Paine as counsel on the two sides of the case.

WITNESS. Here is another plea in abatement. I think there were different continuances from time to time. "1868, March, 48th day, continued;" "63d day, continuance and settlement." That is the way we

dispose of cases by our practice in Rhode Island, if they have been settled out of court or in any way.

Mr. BROOKS. Now I offer the paper. It is the writ of A. & W. Sprague against the Hartford, Providence and Fishkill Railroad Company, dated 31 December, '57, returnable to the March term of the supreme court of Rhode Island, 1868. This is an exemplification of the records, with all the docket-entries. [Marked A—J., M. W. Y.]

WITNESS. Chief-Justice Ames gave the judgment of the court upon the plea in abatement, and suggested this thing, and I assented to it, that it be turned into a writ of summons.

Q. (By Mr. Browne.) What was the ground upon which this writ was abated?

A. That it was a domestic corporation; and under our peculiar attachment law they could not attach property on the original writ, except that of foreign corporations.

WITNESS. The suit in Connecticut was not abated. It continued and remained there all this time—ten years and upwards.

Q. (By Mr. Brooks.) You have been familiar with the practice of law in the State of Rhode Island for a great many years, have you not?

A. Yes, sir.

Q. What is the practice in regard to the entry of the word "settled;" what is the effect of it?

A. When parties have agreed upon a settlement, whether in court or out of court, it is usually entered on the clerk's docket and the court's docket. Each has a docket. Case settled such a day—1st day, 5th day, 20th day, 50th day. Settled as of such a day.

Q. What does that mean?

A. It means the suit is ended.

48 Mr. BROWNE. Stop a moment. The question now is, what does that mean? You have just answered that it meant that the parties had come to an agreement about the case. Do you wish to go beyond that?

Q. (By Mr. Brooks.) What is the effect, according to the practice in Rhode Island, of the entry of the word "settled" in any case?

A. I understand it means that the plaintiff's right of action, as set forth in that suit, is extinguished by actual payment or otherwise.

Q. What other entries is it customary to make in the disposition of cases?

A. In making a final disposition of a case I know of no other entries. Where the practice of the circuit court is followed, to enter "neither party"—following Massachusetts—it was following Judge Curtis—we do discontinue, but that does not discontinue the plaintiff's right of action.

Q. (By the master.) When you make that entry, is the defendant entitled to costs?

A. If the plaintiff simply discontinues his suit, enters "discontinued" such a day, the defendant has his bill of costs.

Q. Suppose it is entered "discontinued" generally, and it don't appear how it is discontinued?

A. If it is discontinued generally, he still has his right to the taxable costs, and the clerk would enter it as matter of course, and issue execution.

Q. (By Mr. Thurston.) The master inquires whether that is an entry made by the court or a form made by others.

A. It is an adoption of the agreement of the parties.

Q. (By the master.) Do you think that that entry, "settled," means that the cause of action is extinguished?

A. I think that might be pleaded in bar in Rhode Island for the same cause of action.

Q. (By Mr. Browne.) Without any evidence explaining it, merely by force of the use of the word "settled?"

A. I should think so, from my experience. I have never known such a case, but I should have no hesitation in making such a plea.

Q. (By the master.) You have never known a case where the question has arisen?

A. I have never known a case but what that was a final disposition of the case.

Q. (By Mr. Browne.) You have never known a case where the question arose?

A. I have not. I believe it is the mutual understanding of the bar that that extinguishes the plaintiff's right of action in that suit.

Q. (By Mr. Brooks.) How long have you been in full practice at the bar in Rhode Island?

A. I was admitted to the bar in April, 1837, and I have practised the profession since that time. I have not always had as full a practice as I would like to have.

49 Q. Do you know of any negotiations in regard to the settlement of this claim of A. & W. Sprague against the Hartford, Providence & Fishkill Railroad Company; and if so, will you state what the negotiations were?

A. Well, Mr. Nott, the superintendent of the Hartford, Providence & Fishkill Road, and Mr. Bartholomew, as acting trustee for the bondholders of the Hartford, Providence & Fishkill Railroad, were for some years talking with me about this claim, and showed me the account. That was before the consultation of August, 1863, I mean.

Q. Now come down to the later negotiations.

A. I was here in Boston, coming from the north—Hanover—and staid all night at the Tremont House, on the 7th of November, 1867. From various causes interesting to the Hartford, Providence & Fishkill, the trustees of that road, and from my connection with the Boston, Hartford & Erie Railroad, I considered it very desirable. I was counsel for the Boston, Hartford & Erie Railroad also from the time of the purchase. I was retained by the Boston, Hartford & Erie Railroad Company at the time of the purchase. I was told by the directors that they would expect me to be their counsel, but they did not give me a retainer.

Q. You mean this contract of August 28, 1863?

A. Yes, sir. Mr. Clark was there, Mr. Crane, Mr. Dupee, and Mr. Graves. Mr. Graves was counsel, and the other gentlemen, I understood, some of them, were directors. Instead of taking the first train home, as I intended when I retired, (I got into town about 11 or 12 o'clock that night,) I thought I would go down to the office of the Boston, Hartford & Erie Railroad, and talk with the gentlemen about settling that account. I went down there. Mr. Farwell was there; an old gentleman, I think Mr. Healey; and I have the impression there was another gentleman there. That was in 1867. Mr. Graves was there, and I think Mr. Eldridge; the president was also there, but I am not positive on that point. I suggested to some of them to go down with me and see Governor Sprague about the settlement of this account. It was concluded, without many words, that Mr. Farwell should go down as vice-president of the company, and Mr. Graves would go with him as counsel, and we went by the 11 o'clock train. I was going home and

these two gentlemen went with me, Mr. Graves and Mr. Farwell; I was to present them to Governor Sprague, and they went. Governor Sprague was not at home that day. They saw Mr. Amasa Sprague, as they told me. I don't know whether I went in with them to see Amasa. At any rate an appointment was made for Tuesday to meet Governor Sprague. At some late hour of the day on Tuesday I saw Mr. Farwell and Mr. Graves, and they told me they had arranged for settlement by a compromise for $130,000. That was the 11th of November, 1867. I think I saw them and we had some oysters together; I am not sure, but they told me that, any way. They came home and I heard no more about it. I was not told that it was to be paid the next day, or when it was to be paid; nothing particular. I saw Mr. Graves occasionally as we were in the habit of seeing each other, and I understood that that settlement was all right, and would be paid. Some time four or five months
50 afterwards I had occasion to see Governor Sprague when he was home from the Senate. I went to his counting-room and transacted my business with him, which had no connection with this account, and as I was going out, and got near the door, he called to me, and says, "Here, Mr. Currey, your company down there" (I understood he meant the Boston, Hartford & Erie Railroad Company in Boston) "have not paid up according to my agreement with them, and if they don't pay soon I shall annul that compromise." I turned back and said, "Very well, I will notify them," and turned again to go out. It was a long room, more than the depths of these two rooms, and he called out to me, "Here," says he, "I annul it now." "Very well," says I. I notified the gentlemen of it some time afterwards; perhaps the same day, maybe the next, and maybe a week or ten days afterwards.

Q. (By Mr. Browne.) What gentlemen?

A. I presume it was Mr. Graves I made my communication to, as associate counsel for the Boston, Hartford & Erie Railroad. He generally corresponded with me and instructed me in my duties—what they wanted me to do in Rhode Island. He was in the office here; and perhaps I notified him before I went to Amasa Sprague or afterwards; it was all within a short time—within a very few weeks. The reason I proposed it was, that the petition for a charter for a road from Rhode Island to Boston, by way of Valley Forge and Attleboro', was coming up at the May session, and I wanted the friendly influence of A. &. W. Sprague and some other parties; they controlled a great many votes. That is, controlled——

Q. (By Mr. Brooks.) This was a branch of the Boston, Hartford & Erie Railroad, which you wanted to get chartered in Rhode Island?

A. It was to meet this road somewhere in Walpole. That would make a continuous independent line between Boston and Providence. I went to Amasa Sprague, whether with instructions from this company or on my own account, and asked him how this matter could be settled, stating that some time had elapsed and some interest ought to be paid, I supposed. He asked me how I proposed to settle it. I proposed to him to settle by paying the $130,000, with such rates of interest as they had paid on their paper at bank from the date of the compromise, 11th November, to that day. He said that would be perfectly satisfactory. I then told him that his brother had annulled the compromise. He said that altered the case. As he expressed it, "Bill has had charge of that account; he made that compromise; I was not satisfied with it, and he must complete it." I then, through him or through their chief clerk, Mr. Green, opened communication with the governor at Washington. His first response was that they would settle for $140,000. I told Mr.

Green then (I had no conversation afterwards with Amasa Sprague about it, but with Mr. Green, their chief clerk) that I would not recommend the company to pay that sum; it was too much; we had made them a fair offer by offering them the current rates of interest which they had paid on their paper.

Q. When you say "the company," to what company do you refer?

A. The Boston, Hartford & Erie Railroad Company. There was correspondence back and forward, and I was instructed to offer them $133,000 by Mr. Graves or Mr. Barry.

51 Q. Who was Mr. Barry?

A. Assistant treasurer of the Boston, Hartford & Erie Railroad Company.

(Despatch from Mr. Barry to Mr. Currey, dated Boston, May 22, 1868, read, and marked B. Letter from Mr. Graves to Mr. Currey, dated May 23, 1868, read.)

WITNESS. I ought to have read this correspondence with Mr. Green before I put in the conversation. I was in Newport on the 20th of May, and I told Mr. Green, as I expected an answer from Washington, that I was going to court at Newport.

Mr. WIGGIN. We don't want the conversation between you and Mr. Green, if you please.

Q. (By the Master.) Who was Mr. Green?

A. The chief confidential clerk of A. &. W. Sprague. That despatch from Mr. Barry was in answer to what I wrote to the officer by reason of the letter and telegram from Mr. Green on the 21st of May.

Mr. BROWNE. These are all in under our objections. I understand that our objections as to incompetency are saved, and that we do not need to object at every stage.

The MASTER. Certainly. I should not give the evidence any more than its legal weight if there was no objection.

WITNESS. I had informed Mr. Green that I was going to Newport to court. He telegraphed me when he asked me $140,000. I talked with him some days about it, and refused even to communicate it to my principals in Boston, to the Boston, Hartford & Erie Railroad Company; and when I was going to Newport I was expecting he would hear from Mr. William Sprague at Washington; so I told him if anything came, where I would be, and he telegraphed me in this way:

"SAMUEL CURREY, *Court-house, Newport:*

"How shall I address you by mail? Reply at once.

"A. & W. SPRAGUE MANUFACTURING COMPANY."

(Marked C.)

I answered how to address me, and then this came:

"PROVIDENCE, 21*st May*, 1868.

SAMUEL CURREY, *Newport, R. I.:*

"DEAR SIR: I have placed before Mr. Amasa Sprague last evening's conversation. I went up on the night of the 20th to see him and returned by the next train. To close the matter he will accept $135,000 in cash. You will please communicate with your principals, and advise Mr. Sprague on receipt of their reply.

"Respectfully, yours,

"CHARLES GREEN.

52 "The proposition is for immediate acceptance." (Marked D.)

I received that the latter part of the day, by the evening mail;

it must have been seven o'clock. I telegraphed to Boston the despatch which I have read. The result was this offer of $135,000, being only a little more than it would have amounted to if it was bankable interest for the period, was accepted. I notified the Spragues accordingly, and some time the following week it was understood between Mr. Graves, myself and the Spragues that we would all meet at the counting-room of A. & W. Sprague on the arrival of the evening train from Newport. I was there in attendance on the general assembly. I should have arrived at six o'clock the 27th of May; the money was to have been paid at that time. I was a little later than six o'clock, perhaps half an hour later, and when I came in Mr. Farwell was present, Mr. Crane, I think Mr. Amasa Sprague. I am not certain, but I think Mr. Graves had left, going to New Haven, or somewhere, and as I came into the counting-room they informed me that the matter was settled, the account was paid, and the papers had passed, except as to the coupons, which I understood were either locked in the bank or in Amasa Sprague's safe, and the clerk having the key had gone away, and they were not comeatable at that time. Upon that settlement the suit which has been referred to here was a short time afterwards entered "settled."

Q. Who did that?

A. Myself and Mr. Gardner in conjunction. Mr. Gardner had succeeded Mr. Paine as counsel in that suit as well as in other business for A. & W. Sprague—John A. Gardner. I did not see any papers passed.

Q. In this negotiation who were you acting for?

A. The Boston, Hartford & Erie Railroad Company.

Q. How came this entry to be made, "settled?"

A. In pursuance of this settlement, as I understood, by Mr. Farwell and Mr. Sprague, or Mr. Green, or both of them, representing that side of the case, and Mr. Farwell, as I understood, representing the Boston, Hartford & Erie Railroad Company, both saying it was settled, and I acted upon that and Mr. Gardner acted upon that. Mr. Gardner was not present at this negotiation at any time; he certainly was not present at this time.

Q. Was there ever any attempt made to disturb that entry or change it, to your knowledge?

A. No, not to my knowledge; not to my present recollection.

Q. You spoke of the coupons not being there at the time when you went into the room where these gentlemen were at the time of settlement. Do you know anything farther in regard to those coupons, or what became of them?

A. It was understood there and expressed—when I say "understood," I mean the gentlemen on the two sides understood and instructed me—that the coupons were to be delivered to me for the company, as Mr. Farwell was going home on the next train, which was the Shore Line train, which leaves Providence about a quarter before eight, and
53 did go. I stayed with him, and we walked round until that time with his little son, and he went home. The coupons did not come to me as I expected. Mr. Graves spoke to me about them some time afterwards, it may be more than once, perhaps once only. I made some application or sent to the office for them. Afterwards one of the boys from the office of A. & W. Sprague (there are several there in attendance) brought me a package labelled "coupons." I read it, but I cannot now state what the label was, further than the fact that they were the coupons in this case, as I supposed, that A. & W. Sprague had agreed to give up by this settlement. That is what I understood. I sent

that package, without opening it or loosening the bandage, by express to Boston, to the Boston, Hartford & Erie Railroad, and I got Mr. Barry's receipt that he had received such a package.

(Receipt read, dated Sept. 25, 1868, marked E.)

Q. Did you send any other coupons at any time?

A. My impression is that there were other coupons sent between the time of the settlement and that.

Q. By you?

A. By me. Delivered to me, and sent to the Boston, Hartford & Erie Railroad Company in the same manner that I sent that package. I have that impression, but I cannot say positively it was so.

Q. Have you any recollection about the classification of the coupons—whether there were one or more classes of coupons in the packages?

A. I did not open the packages.

Q. By any minute on the package?

A. I think the package was about the length of the coupons, and they were piled one on top of the other, which would make it about so thick, [two inches,] perhaps thicker. I think it was written over very close on one side, or more sides than one, describing the coupons within; and my impression would be that there were more classes than one. I knew there were three classes of coupons, and I wish to say particularly that I may mix my previous knowledge of there being three classes of coupons with my recollection of this label, as I took no minute of it.

Q. (By Mr. Wiggin.) You are speaking about those as they were labelled. You don't know what the contents were?

A. I don't know there were any coupons there; of course I don't. But I had no doubt it was all right. I didn't know of my own knowledge. If I had had any doubt I should have looked at the package.

54 SATURDAY, *October* 7, 1871.

Direct examination of Samuel Currey resumed.

Q. (By Mr. Brooks.) Two of the letters which you produced yesterday were not put into the case; will you produce them now?

A. One is a copy and one is the original. The one dated May 12, 1868, is a copy.

Q. Where is the original?

A. The original I sent to the counting-room of A. & W. Sprague the day I received it, taking this copy, which is in the handwriting of Mr. William W. Douglass, a young lawyer in Providence, who had studied his profession in my office, and for want of an office of his own was in my office at that time.

Mr. WIGGIN. Will you let us see that? There is no pretence, of course, that that statement makes that copy admissible.

(Letter from T. E. Graves to S. Currey, dated Boston, May 12, 1868, read and marked F.)

The WITNESS. This letter I received after my informal conversation, unauthorized by any direction of the Boston, Hartford & Erie Railroad board of directors or Mr. Graves, which I mentioned yesterday, with Mr. Amasa Sprague. That was a suggestion which I made to him, which I said I would advise the company to do, and which I thought they would do; pay him the rates of interest which A. & W. Sprague had paid on their bank-paper between the time of the agreed compromise, November 11, 1867, and the time of the settlement. But when I told him, as I said yesterday, that his brother had revoked—I used the word "annulled;" Mr. William Sprague used the word "revoke"—"I revoke it

now,"—he said he must refer the matter to his brother. Then I communicated with Mr. Graves, to the best of my recollection, by letter, what I had done, and I got this letter. I supposed William Sprague would assent to this proposition, as Amasa had. I got this letter of the 18th of May authorizing me to pay $130,000, which was the sum agreed upon in November, and seven per cent. interest. That wasn't accepted by the Messrs. Sprague. Then the conferences which subsequently took place were between myself and Mr. Green, and he communicated with Mr. Sprague at Washington from time to time, until that telegram which I received at Newport, May 21, asking me how he should address me. And the letter followed on that evening saying that they would take——

Mr. WIGGIN. You need not state the contents of so many papers.

The WITNESS. I am merely connecting this with the previous letter. I am not stating the contents.

These letters are before me and are in the case. The letter of May 21 from Mr. Green I read yesterday, stating that they would take $135,000. I communicated that the same evening by telegraph to Boston. To connect this letter of May 23 I read the telegram from Mr. Barry, of May 22, saying they would give $133,000. To that I replied it would not be accepted; and then on the 23d I got this letter from Mr. Graves, which is in his handwriting.

(Letter from T. E. Graves to S. Curry, dated 23 May, 1868, read and marked G.)

55 The WITNESS. That was the last conversation I had on the subject, unless I may have telegraphed to Boston, as I was to be at Newport.

Q. (By Mr. Brooks.) You said yesterday that you understood the settlement of the account with A. & W. Sprague was for account of the Boston, Hartford & Erie Railroad Company; did you retain that opinion after you received Mr. Graves's letter of May 23, 1868; and if so, how could you reconcile it with the directions in that letter to have the transfer of the account made to Mr. Farwell?

Mr. WIGGIN. We object to any such question as that. If you produce that letter as the authority that Mr. Currey got, the authority is the contents of the letter. Where there were written instructions and authority to do an act, it cannot be explained by any inference or supposition, or what he thought.

The MASTER. I should think that unless there was something to base it upon more than merely his mental inference, that would not be admissible.

Mr. BROOKS. I understand there is, and I wish to draw out the testimony upon it.

The MASTER. Was there anything said by any party in regard to this matter, or any acts done more than merely having the note?

Mr. WIGGIN. If your honor please, they produce the authority under which they acted; if that was changed by anything subsequently, it must have been changed by the same party from whom the authority was originally derived.

The MASTER. I do not think there is any doubt that anything that was said or done indicating how that was understood, and why that was directed to be in that form, they would have the right to show, if it was derived from any source competent to give authority. We do not know what it was until the witness tells us. He has not said there was anything yet; but as they are examining him, it would be better for them to proceed. (To Mr. Brooks.) Of course you will direct your

inquiry as to his mental conclusion to what transpired justifying such a conclusion.

Q. (By Mr. Brooks.) Are there any facts within your knowledge which led you to make that statement yesterday, that the settlement was made on behalf of the Boston, Hartford & Erie Railroad Company?

The MASTER. Is it worth while to go over that ground again? He stated his understanding yesterday.

Mr. BROOKS. He didn't cover the ground that this question covers.

The MASTER. You can ask him whether anything was said or done after this direction was given to show how it was understood by the parties. We are getting very nice about the shape of these questions. I merely suggest these matters in order to get along.

Mr. BROOKS. Or anything before?

The MASTER. Or anything before, of course.

56 Q. (By Mr. Brooks.) What I ask is for the facts, if there are any within your knowledge, bearing upon that question. You stated that you had been acting as attorney for the Boston, Hartford & Erie Railroad Company in getting up these claims, have you not?

A. I don't recollect what I said on that point; I was attorney for the company, and I did try to get up the claims.

Q. (By the master.) What was the precise date of the closing of the bargain?

A. It was consummated on the 27th of May.

Q. This letter was a direction the next day, to have these claims assigned, was it?

A. The telegrams in regard to the amount were on the 21st and 22d. On the 23d I received this letter, stating, "We propose to be in Providence next Thursday," which, I suppose, was the 27th; the almanacs will show.

Q. When did you get the direction to have the claims assigned?

A. That was the letter of the 23d.

Q. (By Mr. Brooks.) Was anything said between you and Eldridge, or between you and Farwell, or anything said by Eldridge or Farwell, in regard to why they wanted these assigned, that you heard said; any explanation of that note?

A. I didn't see either of those gentlemen during the period of these negotiations between the 12th of May and the final settlement, until I saw Mr. Farwell on the evening of the settlement.

Q. Had you ever heard Mr. Farwell say anything as to why he wanted that?

A. I never heard anything about the transfer being made, and never heard any one allude to the negotiations until I received that letter. I supposed it would be transferred to an individual, because all their settled claims that I knew of, of the outstanding, floating debts of the Hartford, Providence & Fishkill Railroad Company had been transferred to individuals, and not to the Boston, Hartford & Erie Railroad Company, or transferred in blank. Some of them had been transferred in blank.

Q. Was that a uniform custom?

A. That I knew to be the fact. And it is so provided in the contract, that the accounts should be transferred in blank. I had heard of some transfers to individuals.

Mr. WIGGIN. Well, that is not competent, as you know very well.

A. I knew of it. I transferred my own accounts against the Providence, Hartford & Fishkill Railroad in blank, or to an individual.

Q. (By Mr. Brooks.) State what you know, of your knowledge, in regard to the practice as to the transfer of claims.

A. What I heard about it I heard from Mr. Graves when we were all present; that is, Mr. Clark, Mr. Crane, Mr. Graves, and the other gentlemen I named yesterday, I think Mr. Sayles and Mr. Dupee, at the Allyn House, in Hartford, at the time this contract was executed. Speaking of these claims against the Hartford, Providence & Fishkill Road, they said they would buy them up at the office.

57 Mr. WIGGIN. We object to that.

The MASTER. I think it is competent. I understand that at the time the agreement was made to take up these debts it was agreed that they should be assigned to individuals or assigned in blank. I think that is perfectly competent. Of course your objection will be saved, but I have no doubt it is competent.

Q. (By Mr. Brooks.) Are there any facts which you know about upon this question of the assignment of the claims which were purchased?

A. I knew what was provided here, because, although Mr. Graves drew up the principal part of this contract of September 28, 1863, I believe, I sat in the room with him, and he read it to me, and we talked it over. How the claims were generally assigned I don't know. I assigned my own, but whether I assigned it in blank or to an individual I do not recollect. I think it was in January, 1864, I assigned mine.

Q. You refer to the claim which you had against the corporation?

A. I had a claim for services against the Hartford, Providence & Fishkill Railroad of some three thousand dollars. I discounted on it I don't know how much; some forty per cent. I presume. Mr. Davis was pretty liberal with me, compared with what he was to some; he meant to be. I think it had been reduced to a judgment and execution, but I am not certain about that.

Q. (By Mr. Thurston.) Was there any consideration of policy of which you were cognizant, which was discussed among the managers of the road, relative to the form of the assignment of these claims? (Respondents objected.)

A. Yes, sir; it was mentioned there at the Allyn House that if individuals would buy up these claims, and would get them in that way, we would get a reduction upon them. I suppose this company had no money at that time; they had stock.

The MASTER. Was there any reason assigned, that you recollect, why it should be done in this form?

A. I understand that it was thought at that time that they would get the amounts for less than their faces, and less than they would if they were bought immediately, in the name of the Boston, Hartford & Erie Railroad Company; and that is what I understand the fact and result to be. For instance, Chapman & Hyde had two notes of $10,000——

Q. Who did you understand that from?

A. Those gentlemen who were present.

Q. Who said it of those who were present?

A. More than one; I think Mr. Graves was one. Mr. Dupee was. This was while we were drawing the contract, considering how it should be drawn, We were there two days, I think; perhaps three. I remember I stayed there one night. One night I went down to New Haven and came back in the morning. I think I stayed two nights at the Allyn House—yes, I know I did. It was a good while ago, and I can't remember particularly everything.

58 Q. (By Mr. Brooks.) These persons who had this conference,

whom you have named, were directors of the Boston, Hartford & Erie Railroad Company?

A. Some of them were directors.

Q. Which were directors?

A. According to my recollection Mr. Clark and Mr. Crane were directors; and Mr. Dupee, I understand, was treasurer. He acted as treasurer afterwards, if not then. Perhaps he was also a director; I don't know. Mr. Graves was not a director then; he was counsel. As I understand, he was subsequently a director for a time.

Q. You spoke of Mr. Crane; was that Edward Crane?

A. Edward Crane.

Q. What was Mr. Dupee's name?

A. I don't remember his Christian name?

Mr. WIGGIN. Do you pretend that what these gentlemen said at Hartford as directors is binding on the corporation?

Mr. BROOKS. It shows the reason why a certain course was adopted.

Mr. WIGGIN. Who is it binding upon?

Mr. BROOKS. It is not binding upon anybody. That is not the point at all. It is to show that certain things were said which settled the policy which was subsequently adopted.

The MASTER. I do not see any objection to showing what the relation of these particular parties who had the conversation was to the corporation. If they were not in such a relation as to bind the corporation they would be in your favor; and if they were it would be in favor of the other side. I don't know how we can judge much about the force of the conversation until we know who the parties were who had it, and what relation they bore to the corporation; and this would be shown by their official relation, and also by their actual relation as acting agents. These things are all very common and very natural.

Q. (By Mr. Brooks.) What other men were present, and what relations did they bear to the Boston, Hartford & Erie Railroad Company?

A. The gentlemen whom I remember as representing the Boston, Hartford & Erie Railroad Company were, as I said before, Mr. Crane, Mr. Clark, Mr. Dupee, and a young gentleman named Sayles or Fales, I don't know which. I had some conversation with him about copper-mining at the West. I remember that. I don't think I have seen him since that time.

Q. Was there anybody else?

A. I don't remember anybody else except Mr. Graves, who was their counsel. I had known Mr. Clark thirty years. Mr. Dupee I didn't know until I met him there. Mr. Crane I had known for thirty years.

Q. About what amount was this account of the Messrs. Sprague?

A. What they claimed was $161,000 and upwards.

Q. The coupons that are in question were of what dates of maturity?

59 A. The account states, but I had my own knowledge about it in this way: I was very intimate with the affairs of, and counsel for, the Hartford, Providence & Fishkill Railroad Company from the beginning, and I knew when they failed to pay interest on the coupons of the two cities.

Q. What dates were those?

A. January 1, 1858, and July 1, 1857 or '58; I am not positive now.

Q. Now, were these coupons charged in this account of A. & W. Sprague against the railroad company?

Mr. WIGGIN. We object to that. The account shows what they charged them with, and that has been produced here.

A. I understood the fact at the time to be that they furnished the money to pay the coupons.

Q. What I want to know is, whether these are the same as those charged in the Sprague account.

A. I understood them to be.

The MASTER. Did you know of any other?

A. I did not know of any other.

Q. That is, there were six per cent. coupons of the two cities of $500,000 falling due twice a year; is that all?

A. That is all that I knew they furnished any money to purchase any coupons with.

Q. (By Mr. Brooks.) Now, with regard to the other—those of the mortgage-bonds of the Providence, Hartford & Fishkill Road.

A. There were some banks that held those bonds, seven per cent. bonds of the Providence, Hartford & Fishkill Railroad Company. I don't know but the Spragues may have paid the coupons falling due to those banks; but the general charge for coupons there, I understand to be, and I understood at the time to be, for coupons maturing on bonds owned by A. & W. Sprague, which they cut off when they sold the bonds, from time to time, and would charge them in their accounts against the company as cash.

Q. Now, the question is, whether the coupons in question are charged in that account.

A. I so understand. I have no doubt of it at all. I always understood it so from my first connection with the company.

Q. Have you, as counsel, had occasion to examine that matter?

A. I examined that account, item by item, with Mr. Bartholomew. I distinctly remember that. I so understood it at the time, and so understand it now.

(The account, as shown in A. & W. Sprague's books, is put in by petitioners, and marked H.)

The WITNESS. I wish to correct what may be a misapprehension. Mr. Green was not in the employ of A. & W. Sprague when this
60 account accrued; he came in long after that. (Account marked H.) I have been asked to identify the account that was settled; I wish to state here, that there may be no misapprehension, that I had no account before me in my conversation with Mr. Green and with Mr. Amasa Sprague.

Mr. WIGGIN. Do you mean to say that you don't know whether that is the account or not?

A. No; I mean to say I was familiar with the items, but at the time of my personal conversation there was no account before us.

Q. What do you mean to say in regard to that account?

A. I mean to say that is the account I examined with Mr. Bartholomew prior to this time, two or three years, perhaps, which I always understood, from my relation to these parties, to be the account of A. & W. Sprague against the Hartford, Providence & Fishkill Railroad Company. I have no doubt of any item; I only mean to say that I do not identify any paper as before us at that time. That is all I mean to say about that.

Cross-examination:

Q. (By Mr. Wiggin.) I desire to know more about your professional relations to these different parties. You were counsel for the Hartford,

Providence & Fishkill Railroad Company from 1851 to 1858, were you not?

A. I will explain that.

Q. Just answer my question.

A. Well, I was not, sir; I will explain it to you.

Q. Didn't you so state?

A. No, I did not; I said I was counsel for the Hartford, Providence & Fishkill Railroad Company from the time of the merger of that company into another company. The merger took place in 1852. I was counsel for the Providence & Plainfield Company, a Rhode Island corporation, from the time of its organization down to the time of the merger in July, 1852. I drew these articles of merger in Hartford. They were adopted, I think, the 28th July, 1852, and from that time I was counsel for the Hartford, Providence & Fishkill Railroad to the present time, through either the directors or the trustees.

Q. That is, from 1852, then, you were counsel for the Hartford & Fishkill Railroad until the road went into possession of the trustees, which was in February 1858, was it not?

A. Yes, sir.

Q. And it is still in the possession of the trustees?

A. Yes, sir; and from that time to the present I have been counsel for the trustees.

Q. You then became counsel for the trustees of the Hartford & Fishkill Railroad?

A. Yes, sir.

Q. Who were acting as trustees at that time; who employed you?

A. Mr. Bartholomew was acting trustee chiefly, and I had my conferences chiefly with him.

61 Q. He was managing trustee?

A. Yes, sir.

Q. There were three, were there not?

A. There were some in Rhode Island and some in Hartford. There were more than three. The original trustees in Rhode Island were Alexander Duncan, Benjamin Hoppin, deceased, and Samuel Ames, deceased, late chief-justice.

Q. Mr. Bartholomew was the managing trustee of the road, and he was your employer, and retained and employed you as counsel for the trustees, did he?

A. Well, all the trustees, when I happened to see them and talked about that, employed me as much as he did; that is, I don't suppose there was any dispute about it.

Q. I only want to come at your exact professional relations with these parties, to get at what we want to presently. You continued as counsel up to the time of the sale and consolidation with the Boston, Hartford & Erie Railroad?

A. Yes, sir, and just as much afterwards as before.

Q. And when the merger or union of the Hartford & Fishkill Railroad with the Hartford & Erie took place, making in fact one corporation, as was supposed, you acted as counsel for the Hartford & Erie Railroad Company, did you?

A. Not on the merger, but subsequent to that.

Q. By whose employment or whose retainer?

A. Well, sir, at Hartford——

Q. No; I want to know by whose retainer, by whose employment.

A. I am going to tell you in my own way.

Q. You became counsel for the Hartford & Erie after the merger?

A. I am going to answer that question, and answer it in my own way. At Hartford, when the consummation took place, some of the gentlemen, Mr. Clark was one, and I think Mr. Crane another, said they would want my services in Rhode Island, in procuring a charter. I don't remember of doing any business for the Boston, Hartford & Erie Railroad until January, 1864. This was August, 1863. Then Mr. Graves came up there and wanted me to draw up certain petitions in the charter, and I commenced at that time. That was the way I was retained.

Q. Is that the extent of your professional engagements with the Boston, Hartford & Erie Railroad Company?

A. That was the beginning of it, as near as I can recollect.

Q. Are you counsel for the Boston, Hartford & Erie Railroad Company now, in any shape, in bankruptcy or for the receivers?

A. I supposed my account with the receivers was closed.

Q. Have you been acting as counsel for the receivers?

A. Yes, sir.

62 A. Have you acted as counsel for the Hartford & Erie until it went into bankruptcy?

A. I supposed I did; I considered myself as counsel.

Q. Are you still counsel for the trustees of the Hartford, Providence & Fishkill Railroad?

A. Yes, sir.

Q. Well, then, if I understand you right, you have been counsel for the Hartford & Fishkill Railroad from the time of its merger with the Plainfield Railroad up to the time of the taking possession by the trustees; then for the trustees to the present time; and you are now their counsel, and you have been counsel for the Boston, Hartford & Erie Railroad, and authorized to act for them?

A. Yes, sir; for the Boston, Hartford & Erie. I have tried a great many suits for them, one way or another What is most desirable to consummate that, is the payment of my bill.

Q. Now, Mr. Currey, acting as counsel in the way which you have stated for these different roads, representing, in fact, but one interest finally, did you know in 1868 that the Messrs. Sprague claimed to have and hold in their possession these coupons as collateral security for their claim or debt against the Hartford, Providence & Fishkill Railroad? Didn't you know that fact?

A. Which coupons do you mean?

Q. These coupons in suit, mentioned in this account.

A. There are three classes of them.

Q. All of them?

A. What I knew of them was——

Q. Just answer the question.

A. I can't answer it without explaining it.

Q. The question is here: Did you not, acting as counsel for the trustees at the very time of this pretended settlement, did not you know, and hadn't you known for a long time before, that the Messrs. Sprague had in their possession and claimed certain coupons, I won't say these coupons, but certain coupons against the Hartford & Fishkill Railroad, as living securities to protect them for claims which they held against that road? Didn't you know that fact?

A. No; what I knew was this: I knew they held coupons of the two cities, six per cent. coupons; I supposed they might at any time exchange those six per cent. coupons and take the seven per cent. coupons of the seven per cent. bonds in possession of the two cities.

Q. That would still have left in their hands certain coupons?

A. Yes, sir.

Q. That would have left the same amount of coupons in their hands?

A. Yes, sir.

Q. That is, whether you did not know, representing these different corporations as their counsel, that the Messrs. Sprague had in their possession, in 1857 and 1858, certain coupons of the city of Providence and of the city of Hartford, and of the Hartford, Providence & 63 Fishkill Railroad, which they claimed as collateral security for claims which they had against that road or on account? You can answer whether you knew that or not.

A. I knew they claimed to have two classes of coupons, the Providence coupons and the Hartford coupons. I knew they claimed to have them, and meant to hold them until they got pay for the money they had paid for them. I don't know as I would call them collateral. The coupon itself was evidence of debt. They might have exchanged that 6 per cent. coupon for the 7 per cent.

Q. But you knew they had them in their possession as evidence of debt against this railroad company?

A. Yes, sir; I knew the fact that they had paid the money and had taken the coupons. That is, I knew they claimed to have done so, and nobody doubted it.

Q. You did not dispute it, did you?

A. No question was raised about that fact. I don't know that there was any.

Q. There never was any, was there?

A. I never knew of any.

Q. And up to that time you were representing these different interests?

A. Yes, sir.

Q. You had knowledge of the fact which you have stated, and that was not disputed, to your knowledge, by any of the corporations which you represented?

A. I was never called upon; I never actually attempted to negotiate a settlement of that account with A. & W. Sprague. As I stated yesterday, they sued the company, and never filed their account. It was never filed in court, and is not now.

Q. What we want to get at is simply this, and you can answer if you haven't already answered fully: Knowing the claim which the Spragues set up in regard to their possession of these coupons, whether you as counsel, and representing these different corporations, had any doubt that their claim was just and true?

A. I was never called upon to make any admission about it.

Q. Was it ever disputed by you?

A. I never had occasion to try the case.

Q. Answer the question: did you dispute the fact?

A. I never did; I was never called upon to pass any opinion upon it one way or the other.

Q. Haven't you said that you and Mr. Bartholomew examined this account?

A. Yes, sir; at that time.

Q. When was that?

A. I should think it was after the merger in 1863, and some time before 1867.

Q. You examined it in 1863?

A. No; I think it was about 1866, speaking from rough recollection; I have no definite remembrance.

64 Q. You and Mr. Bartholomew made an examination of this Sprague account in 1866?

A. I don't say it was in 1866; I should think it was about 1866.

Q. You made an examination of this claim? Mr. Bartholomew as trustee, and you as counsel?

A. Yes, sir.

Q. You did not dispute or deny at this time that the Spragues held these coupons as valid claims against your corporation and against the city of Providence and city of Hartford?

A. I have never heard it disputed by any one.

Q. Did you dispute it?

A. No, I never disputed it.

Q. That, you say, was about 1866?

A. I should think it was.

Q. You knew they had these coupons in their possession from 1857 to 1858?

A. No, I didn't know it. I knew they claimed to have paid the money, and I supposed they had paid it.

Q. You had no doubt of it?

A. No, not at all; nobody ever doubted it, to my knowledge. It was a fact perfectly well known in Providence that they advanced the money to take up the coupons when the company could not do it.

Q. Who was the counsel who represented the Messrs. Sprague in this transaction?

A. Mr. Abraham Payne of Providence brought the suit; subsequently Mr. John A. Gardner succeeded him and took charge of the suit.

Q. Did you act for the Hartford & Fishkill Railroad then exclusively, or was some one associated with you?

A. I had no associate counsel in Rhode Island.

Q. How was it in Connecticut?

A. There were counsel in Connecticut. Hungerford & Cone and other counsel acted for the company.

Q. Didn't you know that Mr. Chapman acted for the road?

A. I heard so.

Q. You did not know by association with him?

A. No, sir; I had no association with him in business. I had with Hungerford & Cone more than once. I understood that Mr. Chapman acted—whether it was father or son, or both, I don't remember. I knew them both.

Q. After you came into the Boston, Hartford & Erie Railroad as their counsel, were you not junior to the permanent solicitor and counsel for that road, and subject to his instructions and directions in all particulars?

65 A. I considered myself so. I would not have done anything which I did not suppose he would approve of, or which he had not asked me to do. I considered Mr. Graves as the senior counsel.

Q. Did you take your directions from him?

A. I did in most cases. I communicated with him in place of communicating with the president, although I occasionally saw the president. He came down to Rhode Island once or twice to see me; may be more.

Q. Now, I want to ask you if you ever heard it suggested, until after the commencement of this controversy, or before May 27, 1868, that these coupons which were held by the Spragues were held by them merely as vouchers?

A. Yes, sir.

Q. By whom?

A. Well, I think I heard it suggested by a number of persons.

Q. Well, by whom?

A. I think by Mr. Nott, the superintendent, I think by Mr. Bartholomew, and I think by other gentlemen, suggesting how the account was and how it stood.

Q. When was that?

A. Well, at different times prior to this settlement.

Q. But nothing of the kind was ever suggested in any examination of this account by you and Mr. Bartholomew? Nothing of the kind was ever suggested by you as counsel for the Hartford & Fishkill Railroad or for the trustees, but something was said about it by those gentlemen at some time or other?

A Some outside conversation. I remember distinctly one item in that account which was objected to by Mr. Bartholomew at his examination of it and mine. I don't remember that there were any objections made to the coupons at that time.

Q. Now we have got through with the coupons in the hands of Messrs. Sprague, and I want to call your attention to the Sprague account. Was that the account which you and Mr. Bartholomew examined?

A. Yes, sir; I think it was the very same account, or a copy of it.

Q. Was that or not admitted to be a just debt or claim against the Hartford & Fishkill Railroad?

A. The greater part of it. One item, I remember, was objected to. I think it was all admitted but one item and interest.

Q. What item was that?

A. The item was 2½ per cent. commission.

Q. What did it amount to?

A. If I should speak according to my recollection, it would be $18,000; but I see it is $10,000. But the whole commissions were objected to.

Q. Then all the account, except this $18,000, was admitted by you and Mr. Bartholomew?

66 A. No, sir. I must explain to you. You say "all the account." I tell you no. There was $18,000——

Q. Wait one moment, if you please. I asked you, in the first place, if this account of the Messrs. Sprague that was examined by you and Mr. Bartholomew was not admitted to be a just account against that corporation, and I understand you to say all except one item, amounting to about $18,000.

A. Yes, sir.

Q. Now, my question was this: Was the rest of the account, save that item, admitted to be a just and true claim against that corporation?

A. I must answer you according to my recollection. The sum-total of the objections to the account, in my memory, was $18,000. If I spoke according to memory only, I should think it consisted only of the item of commissions. I think there must have been some other items of the account to make up the $18,000, as I see the commissions charged amount to $10,000. That is my recollection.

Q. But the whole amount which was in dispute was the sum of $18,000?

A. That is the way I understood it.

Q. The rest of the account was admitted to be a just claim against the corporation?

A. Yes, sir.

Q. Then, on the 27th of May, 1868, and for some time previous, it was admitted by the Hartford & Fishkill corporation—it was not in dispute—that that corporation owed the Messrs. Sprague that account, save and except this $18,000, made up you say you do not know in what way?

A. Part of it was commissions, I know; that I distinctly remember.

Q. Bear in mind my question. It was admitted up to that time, and at that time, that this corporation owed the Messrs. Sprague this account, except $18,000, and that they had in their possession these coupons, which they claimed to hold as collateral security for the payment of the account?

A. I haven't said that they had these coupons.

Q. Just answer my question.

A. I say no.

Q. Haven't you said yes before?

A. No, sir.

Q. Haven't you said that you knew all along that the Messrs. Sprague held these coupons, and claimed to hold them as collateral security?

A. No; I didn't say that they claimed to hold them as collateral.

Q. Well, as security, as property, as valid, living evidences of debt against that corporation? We won't quarrel about terms.

A. I understand that they understood that they had these coupons, and that they were good claims in their hands.

67 Q. Against the corporation?

A. No; against the city of Providence.

Q. Against the city of Providence, the city of Hartford, and against the corporation?

A. Yes, sir; I think they paid them in the interest of the corporation, and charged the money that they had paid as cash against the corporation.

Q. They claimed to hold these coupons as security for what they advanced and paid?

A. No; I know they claimed they were not to give them up until they got the money that they had paid for them.

Q. How did they hold these coupons—were they mere blank pieces of paper, mere receipts, or were they property?

A. I haven't said any such thing. What I understood their claim to be was, that they had advanced the money to pay the city coupons, which the company had not the means of paying; that they paid that money for the railroad company, and charged to the railroad company the coupons as vouchers for so much money paid on account of the company. That is what I always understood it to be, and do now.

Q. Then, if I understand you right, omitting the word "collateral," in 1868, about the time that this transfer took place to Mr. Farwell, there was an undisputed claim of the Spragues against the corporation, amounting to $161,000, less this $18,000, and they owned these coupons which they held. Am I right, sir?

A. Well, I understood that they paid the money for the company to the amount of these coupons.

Q. They had these coupons in their possession and claimed them as their property at that time?

A. They claimed them as vouchers, I understood it, for so much money paid on account of the company.

Q. Did you ever say one word about "vouchers" before? You have been examined before on matters touching this transaction, haven't you?

A. I don't know as I was on that question.

Q. Didn't you state on your examination before that they were held by the Messrs. Sprague as security for the advances they had made?

A. I might have said that.

Q. Didn't you say, moreover, that when you went to negotiate with

them, you told them that about all the value of their account was in the coupons that they held as security for it?

A. No; I don't think I did, sir. I remember stating——

Q. Just answer my question. Didn't you state in your examination at Providence, in regard to this matter, in reply to a question by the court, that you told the Messrs. Sprague, or one of them, that all the security, or about all the security, they had for their debt, and all their debt was worth, was the value of these coupons which they held?

68 A. Yes; something to that effect; I don't remember the language.

Q. That was the way this thing stood when you undertook to negotiate in 1868?

A. Yes, sir,.

Q. Now, I want to call your attention to another branch of the examination. When was the first attempt made, within your knowledge, to settle this debt of the Messrs. Sprague by anybody? After that suit had been commenced? Perhaps it isn't necessary to go beyond that suit.

A. I think, from the time of the commencement of that suit, it slept for a few years without any attempt, one way or the other, and perhaps until after the war; I think so. It was occasionally talked of by the Messrs. Sprague; occasionally mentioned to me. They said they hoped they would sometime get paid.

Q. The question was, when was the first attempt made, within your knowledge, to settle this Sprague debt?

A. I was going to answer the question. I should think it was shortly after the war, and that is the reason I say 1866, from my recollection.

Q. Who made it?

A. Mr. Bartholomew came to me with that account. I was boarding at the City Hotel, and he was staying there.

Q. He came to you with the Sprague account?

A. He had the account with him, and I understood he was endeavoring to negotiate a settlement. I understood, in general terms, the amount admitted to be due was less than $140,000; how much less I don't remember. That is my impression; I recollect we discussed the item of commissions.

Q. And the amount which he admitted to be true at that time was about $140,000?

A. A little less, I understood it; that is my impression now.

Q. The account had then been rendered to Mr. Bartholomew, and he had it with him?

A. I think it was that same account, item by item.

Q. Did he go to the Messrs. Sprague, or either of them?

A. I understood from him he had been trying to settle it.

Q. My question was, when the first attempt was made for the settlement of the account with the Spragues?

A. That is the first time I had knowledge of it, at that time.

Q. That is no attempt to make any settlement; nothing you have stated yet.

A. I understood he was trying to get to the bottom line of this account. There was another matter outstanding between the company and A. & W. Sprague——

Q. No matter about the other matter; confine yourself to my question, and we shall get along faster. When did Mr. Bartholomew, or you, or anybody in behalf of the Providence, Hartford & Fishkill Railroad Company make any attempt to settle this account?

69 A. I think it was in the winter of 1866, the time I refer to.

Q. Who made it?

A. Mr. Bartholomew.

Q. Were you present?

A. I was not. I say he came to me, and I understand from him that he had been to see them; that is all I know about it.

Q. That is nothing in answer to my question; I want to know, as far as your knowledge goes, when you first knew that anybody attempted to settle this account with the Messrs. Sprague, to compromise it, or pay it, or buy it, or anything else.

A. I have told you. I told you I was not present, but Mr. Bartholomew came to me and told me that he had been trying to get to the bottom line of that account.

Q. All you know about that is, that Mr. Bartholomew told you that he had been trying to get the bottom line of that account?

A. I might also say that Mr. Nott mentioned to me several times that he had tried to settle the account.

Q. My question was, when the first attempt was made, within your knowledge, for a settlement.

A. The first attempt, within my knowledge, was made at my suggestion by Mr. Farwell and Mr. Graves going to Providence, Nov. 8, 1867. Not seeing William Sprague, they came on the 11th. I was not present at that interview at the time between the parties. I only know what they told me.

Q. Then the first attempt at any settlement, compromise, or payment of this claim of the Spragues, so far as you know, was made in November, 1867?

A. Yes, sir, so far as I have any personal knowledge.

Q. And that was made at your suggestion by Messrs. Farwell and Graves, and the other parties you mentioned?

A. Yes, sir. I know as much about the other as I know about that. They merely told me. I know they went there. I went to the counting-room to introduce Mr. Farwell to Mr. Sprague, but he wasn't in the counting-room.

Q. That attempt was made at your suggestion?

A. Yes, sir. In this suit there was an attachment put upon all the property of the corporation, real and personal. I think the records will show that.

Q. At all events the pendency of this suit and the attachments were embarrassing to the road, were they not, and troublesome to the road?

A. Yes, in this way——

Q. And you regarded it as very desirable that those attachments should be removed?

A. Allow me to say that Mr. Nott told me repeatedly——

Q. I don't want you to undertake to tell what Mr. Nott or Mr. anybody else told you, unless it is pertinent to the question which I ask.

70 A. I consider that pertinent. I knew it was embarrassing——

Q. I asked you the question whether or not the pendency of this suit and these attachments on the property of the corporation were not embarrassing.

A. I understood it to be so.

Q. You considered it so?

A. I considered it so, and I understood others did.

Q. You considered it very desirable that the attachments should be

removed and that the claim of the Messrs. Sprague should be got out of the way?

A. The attachment had been removed, so far as Rhode Island was concerned, not in Connecticut, by the decision of the court on my appeal in abatement.

Q. You desired to get the suit out of the way and have the claim of the Messrs. Sprague settled in some way. Were they friendly to the road?

A. Well, they were "owly" at times.

Q. What do you mean by that? that is a Providence term; let us understand what it means.

A. That is a phrase applied to the governor. "Owly"—when he is a little cross. He was a little cross because he could not get his pay for his account. He used to complain that he wanted that account settled.

Q. And you acted from your own impression, your own judgment as counsel of the road, and suggested to these gentlemen that that claim should be got out of the way in some way?

A. Yes, sir; there was another reason for it besides that. As I stated yesterday, I wanted the influence of these men in favor of the charter. One of the Spragues had told me the charter would be opposed by them with all their power, unless this account was settled.

Q. What do you mean? did you mean to bribe these gentlemen?

A. No, sir.

Q. Did you want to buy their influence?

A. I wanted to pay a just account, and they promised their influence.

Q. Do you mean to say that the reason why you wanted to pay a just account against this corporation was because you wanted to use their influence in the legislature?

A. I did not pay the account.

Q. Well, advise it to be paid?

A. Well, I understood that would be one advantage.

Q. You said there was another reason. I want you to state here whether that was the reason for paying what you admitted to be a just account, that you wanted to secure their influence in favor of some legislative action.

A. That was one reason; there was a bottom reason——

Q. Were you a member of the legislature at that time?

A. No, sir, I was not.

71 Q. Were you a lobbyist at that time?

A. No, sir; I was never a lobbyist. I had been a member years previous, and I am now.

Q. Then the only two reasons for your advising these gentlemen to go into that operation were, first, that the suit was embarrassing the road; that the Messrs. Sprague were "owly," and you wanted to get their influence to secure the passage of some charter through the legislature?

A. Those were reasons. There was another still stronger reason. I had been personally instrumental in their commencing to afford these accommodations to the railroad company. I was often reminded of it by Mr. Byron Sprague, now deceased, and I always desired on that account particularly. I had a personal interest in having them paid; that was my motive cause the morning that I went from the Tremont House down to this room.

Q. Now, I want to come back to this November 8, 1867. We understand your reason for bringing this to the notice of these gentlemen. Did you happen here, or did you come here on purpose?

A. I happened here; I was coming from Andover; I went up to Andover, N. H., and Hanover. I was coming home, and stayed over night. I stayed over on purpose to go and see these gentlemen.

Q. Did you see them that night, or the next morning?

A. The next morning. It was 11 or 12 o'clock when I got to the Tremont House.

Q. Who was present?

A. I remember Mr. Farwell, Mr. Graves, and, I think, Mr. Healey. There was another gentleman I occasionally saw in there. I don't know but it was Mr. Wiggin; but I don't think it was. He was a taller man; an old gentleman, whose name I never knew. He was a larger man than Mr. Healey. I think Mr. Eldridge was there, but I am not sure.

Q. Now, what was your object in seeing these gentlemen in reference to this claim? What did you want them to do?

A. There had been previous talk between Mr. Graves and myself, that some time they would come down and settle that account.

Q. Can't you answer the question directly?

A. My object was to have them come and see Governor Sprague before he went to Washington as Senator.

Q. For what purpose?

A. To settle this account.

Q. Did you use the word "settle?"

A. Yes, sir.

Q. Are you positive of that?

A. Did you ask me what I said then?

Q. Yes, sir; what you said then.

72 A. I presume I used the same word; that was my intent.

Q. Your object in going there was simply this, wasn't it: you wanted the matter settled some way, so far as the Spragues were concerned, and got out of the way before he went to Washington?

A. Yes, sir.

Q. Then all the object of your visit there that morning was to get this account settled, wasn't it; to get them to make some arrangement about that claim, before the governor went to Washington?

A. Yes, sir; because they would be more likely to see him conveniently in November.

Q. And they proposed to go down to Providence soon?

A. They said they would go that day, and they did go by the 11 o'clock train, and I went with them. It was ten or eleven o'clock, and we went off in a few moments.

Q. And the result was that nothing came of it?

A. We did not see him; he was not at home.

Q. Nothing came of that November transaction?

A. Yes; an appointment to meet him the Tuesday following.

Q. That failed entirely?

A. No, because they saw him, in pursuance of that appointment, the Tuesday following, and made an agreement.

Q. Did you make any other arrangement or attempt to settle this account between that time, Nov. 7, 1867, and May, 1868?

A. Well, November 11, you had better say, because they went down on the 11th.

Q. Between that time and May, 1868, was any other attempt made by you to arrange, compromise, or settle this claim? Did you have any connection with such attempt?

A. I don't recollect that anything was said about it until the governor spoke to me about it some few months afterward, and said if they didn't

pay soon he would revoke it, and before I got out of the office he said he would revoke it.

Q. And he did revoke it, so that entirely failed?

A. Yes, sir.

Q. Now, the question is, whether afterward, and before May 22, 1868, any other attempt was made to pay, settle, or compromise this claim.

A. What I stated yesterday, that I said to Amasa Sprague on my own account, I presume, without any instructions.

Q. You understand my question: was any attempt made by you, or anybody else, to your knowledgo, to arrange this matter between the failure of this Nov. 7, 1867, agreement, and the time when the negotiations were commenced which resulted finally in a settlement?

A. I never knew of any nor heard of any. It remained still. I made one misstatement. I was a member of the assembly.

73 Q. At the time you wanted to get the influence of these gentlemen?

A. The matter did come up, but I had nothing to do with it. The matter did come up in the house; I was in the senate. I was in the January session, 1868, and went out at the end of that session.

Q. You thought you would pay a just debt for the sake of getting their influence upon the legislature of which you were a member?

A. No, sir; I didn't do any such thing as that. One of the Spragues said, "Your charge has been hanging a good many years, and if you will pay that, and pay Waterman, who is a poor man, and pay ———, we will go for that," or "our friends will go for it." That is what he said.

Q. Now, from the time of the attempt to settle in November, which finally failed by the revocation made in March, from that time up to the time when negotiations were re-opened, which resulted finally in a compromise and settlement, nothing had been done?

A. Not that I heard of or knew of. I don't think there was anything done. If there had been I should have known it through Mr. Graves.

Q. Now, then, all your authority in regard to this matter was derived from Mr. Graves, was it not, sir?

A. That letter——

Q. I don't refer to any letter. All the authority you ever had in regard to what you should do about this matter came from Mr. Graves, didn't it?

A. Yes, sir.

Q. And all that authority was in writing?

A. No, I don't say so. Mr. Graves was down there during the January session, 1868, and it may have been mentioned between him and me, between the time of this November settlement and the revocation.

Q. All the authority which you had in regard to everything you did about this matter in May, 1868, was derived from Mr. Graves, was it not?

A. No; Mr. Barry's telegram to settle for $133,000 was additional to what Mr. Graves wrote me.

Q. You did not understand that Mr. Barry had any authority to compromise?

A. No, I supposed he spoke on behalf of the company; and as it came from the treasurer I felt authorized.

Q. You knew the railroad had the free use of the telegraph, and all these persons used Mr. Barry's name to send telegrams on all kinds of business?

A. I supposed they had. I knew that Mr. Graves used to telegraph in the name of the company free. I heard of it.

Q. Now, I want to come back to this point, and I want you to answer. Did you have any other authority than that which is exhibited in those letters produced here by you from Mr. Graves in regard to the settlement or compromise of that claim?

74 A. I don't recollect any verbal authority from Mr. Graves, although we talked it over.

Q. Can't you answer the question? Did you have any authority in regard to that from Mr. Graves except what is contained in those letters?

A. I say I think I might have had verbal authority corresponding to that in the letters, but not as to the definite amount.

Q. In the paper which you produce here of May 12, Mr. Graves says: (Letter read.) Did you ever make that proposition to the Messrs. Sprague?

A. I submitted the original letter to them, and took that copy before I submitted it. I think I did, sir.

Q. What did they say? Did they accept the proposition or reject it?

A. They did not accept it.

Q. They rejected it, didn't they?

A. I am not saying that, sir. It led to further negotiations.

Mr. WIGGIN. Don't answer too much.

The WITNESS. Why, Mr. Wiggin, I know how to answer. I shall answer in my own way.

Q. You laid the original letter before the Messrs. Sprague. Didn't they reject the proposition, and didn't they tell you they would take nothing but money?

A. I think Mr. Amasa Sprague said to me that he didn't——

Q. Was Amasa Sprague present when the letter was laid before them?

A. I think I took the letter to the counting-room myself, with the expectation of seeing him. I don't know that I did see him that day. I know what he said to me about Mr. Bates.

Q. I don't want you to branch off to other matters. You took this letter to the Messrs. Sprague, or one of them?

A. I think I did.

Q. Have you any doubt about it?

A. I have no doubt that I took it to the counting-room. Whether I saw Mr. Sprague at the time I carried it over, or saw him the next day, I can't say; I recollect his saying to me he did not doubt the indorsement of Mr. Bates; it was good enough, he knew very well; but he would not take paper, he would take money. That was the substance of it. But he would not take that sum.

Q. Then that proposition was declined?

A. Yes, sir; but he did say he would refer the matter to his brother, and say what sum he would take in money.

Q. But that proposition was rejected?

A. Yes, sir.

Q. (By Mr. Brown.) If I understand you, he said he would not take anything but cash, but he would not take that sum in cash?

A. Yes, sir; that is the impression I came away with.

75 Q. (By Mr. Wiggin.) Did you communicate the fact to Mr. Graves?

A. I think I did.

Q. You have no doubt of it, have you?

A. None at all.

Q. That was the second attempt to settle which ended in failure?

A. It did not end, because they referred——

Q. That was the end of that matter?

A. It did not end, Mr. Wiggin. The negotiation went on, until it terminated in $135,000.

Q. I ask you if that was not the end of that proposition, to settle by giving notes?

A. As far as that part of it was concerned, it was.

Q. And that fact you communicated to Mr. Graves by letter?

A. I think I did.

Q. You have no doubt of it, have you?

A. I have no doubt of it, but I don't remember it.

Q. Didn't you have an interview with Mr. Graves at Providence, between the time when you notified him of the rejection of that proposition and the time when he wrote this letter of May 23, in regard to this matter?

A. I might, and might not. Very likely I did.

Q. What is your recollection?

A. I think I had a personal interview; that he came to my office. I am not sure about it. I talked with him about this matter so often in my office, and other matters, that I can't answer the question.

Q. I will come down a little closer to it. Did not Mr. Graves meet you in Providence, after this proposition had been rejected, and tell you that Mr. Henry N. Farwell was going to buy that claim?

A. I have no recollection of it.

Q. Do you mean to swear that he did not tell you so?

A. I mean to swear that I have not the remotest recollection of it.

Q. I wish you would reflect a moment upon it. Did you have an interview with him at Providence?

A. I had so many interviews, at so many times, that I can't specify that occasion; but I do think that in passing through he called to see me one day after the final settlement. I think it would be after the 12th of May.

Q. My question is whether you had an interview with Mr. Graves at Providence, after this proposition to pay with these notes had failed, and Mr. Sprague had said he would not take anything but cash, in which interview Mr. Graves told you that Mr. Henry N. Farwell would purchase that claim?

A. I have not the remotest recollection of it.

76 Q. That is all you mean to say, that you have no recollection of it?

A. Yes, sir; not the remotest; I don't say it was not so.

Q. Do you recollect seeing Mr. Graves the day you went to Newport, or the day before you went to Newport?

A. I was there the week of the 20th, and there the week of the 27th, whatever days those came on, at the court of common pleas.

Q. Do you recollect having an interview with Mr. Graves at that time, that is, before you went to Newport, about the time of this final transaction?

A. I think I do. I think he called on me there. I think the subject was the charter we were going to press. And I think if we had such an interview, there is no doubt we talked about the settlement of this account, as the negotiations were then pending.

Q. You now remember that you did have an interview with Mr. Graves before you went to Newport, about the time of this settlement?

A. I don't remember any interview about this account. I have the impression he was there on his way to or from. He went a good deal to New Haven. That letter mentions the 23d he was going to New Haven.

Q. This letter of May 23, 1868, was mailed to you at Providence, was it not?

A. Yes, sir.

Q. Where were you when it arrived at Providence?

A. I guess I had got home from Newport.

Q. Then you were at Providence when this letter arrived there?

A. I should think I was, or got home the next morning, or something of that kind. I think I was at Newport, Tuesday, Wednesday, and Thursday.

Q. This letter contains this clause: "We propose to be in Providence Thursday," &c. "Please have all claims assigned to H. N. Farwell, and right to collect in name of Spragues, so we can close up." Now, the last letter, and where the thing broke off, was the rejection of the proposition which had been made. You don't recollect any interview between that time and the date of this letter, but you think there might have been. Now does not this letter so revive your recollection that you can now testify that you did have an interview with Mr. Graves between those two times?

A. It does not, sir; not in the least.

Q. "Please have the claims assigned to H. N. Farwell, and right to collect in name of Spragues." Did you follow that instruction?

A. No, I did not get any assignment made of the papers at all.

Q. You knew at this time that these claims were to be assigned from this letter?

A. Yes.

Q. And you say you did not draw up any assignment?

A. No.

77 Q. Now, did you not draw up the form of the assignment to be written on that account and give it to Mr. Green before you went to Newport, for him to copy on the account for the Messrs. Sprague to sign?

A. I might have done it, but I have no recollection of it.

Q. Don't you know you did?

A. No, sir. I have no recollection of it.

Q. Didn't you notify the Messrs. Sprague that these parties were coming down to pay the money and purchase that claim?

A. I remember this——

Q. Just answer the question.

A. I can't answer it without an explanation. I remember—I am speaking from my recollection—I remember that at the time when Mr. Farwell did come, it was agreed on between me, Mr. Green, and Mr. Graves——

Q. This is the question: When you got this letter of May 23, 1868, in which they informed you that they would be in Providence on Thursday, and asked you to have the assignment made out in the manner indicated here, didn't you go to the Messrs. Sprague, or to their counting-room or office, and notify them of the contents of this letter, and of the fact that they were coming?

A. I did. I remember it from the fact that this letter says "immediate." I was particular to explain to them why it was not done the same day.

Q. You need not go into the reasons. You remember you did go there?

A. I did go, and ask them to wait until the next Thursday.

Q. Don't you recollect that you drew up a form of assignment for Mr. Green to write upon that account when it should be transferred, and left it at the counting-room of the Spragues before you went to Newport?

A. I might have done it, but I have not the slightest recollection of it, and I have no charge for it upon my books.

Q. Would you make an independent charge for so small a service as that?

A. I might have charged it in a lump; that would be more probable, and I guess it was.

Q. You don't pretend to say you did not draw up a form of assignment?

A. No, sir; I might have done so, but I have no recollection of it.

Q. Now, do you know when you went to Newport after you got that letter?

A. I suppose I went the Tuesday following, because that was the session of the general assembly.

Q. And when did you return?

A. I returned the day of this settlement, the 27th or 28th of May. My impression is that the date is erroneous, that it was the 28th. That is my recollection, but I may be wrong as to that. The session was very short, two or three days only.

78 Q. Then you went to Newport on Tuesday of the week when this settlement took place?

A. It strikes me now I went down Monday afternoon.

Q. And you were not in Providence until the trade was consummated?

A. No, sir; I staid at the Atlantic House nights during that session in May, as I stated yesterday.

Q. Are you acquainted with the signature of the Messrs. Sprague?

A. I think I should know Amasa Sprague's and William's. I have seen them write frequently, and have got letters and notes from them.

Mr. WIGGIN. Is there any dispute about this signature?

Mr. THURSTON. I should suppose not, sir. That is Amasa's signature.

WITNESS. I think it is Amasa Sprague's signature.

"PROVIDENCE, *May* 27, 1868.

"In consideration of one dollar to us paid, the receipt whereof we do hereby acknowledge, we hereby assign and transfer to Henry N. Farwell the above account, and authorize him to use all means in the law to collect the same in our name, at his expense, from date

"A. & W. SPRAGUE."

Q. Mr. Currey, were you present when that contract was made?

A. No, sir.

Q. Then you don't know anything about the trade which was finally made between the Messrs. Sprague and Henry N. Farwell?

A. I don't pretend to know what took place on that occasion, at their personal interviews.

Mr. HOLMES We put in that account now as a piece of evidence. We propose to show that that is the identical account handed to Mr. Farwell at the time he paid the money.

Mr. THURSTON. We want to sustain no prejudice in consequence of the memorandum which Mr. Green has made.

Mr. HOLMES. We propose to take all the advantage of this account as it at present stands, because it has never gone out of Mr. Farwell's hands.

Q. Now, can you state whether Mr. Farwell told you that the account was settled, or the matter was settled, or what language he used?

A. I cannot, sir; I don't pretend to give words.

Q. Did you ever notify or inform Mr. Farwell that you had so disposed of that suit?

A. I did not; I did not suppose he had any interest in it——

Q. You need not go any further. Just answer my questions. Now I want to call your attention to another matter: about the delivery of these coupons. You have undertaken to state that all those coupons were sent to Mr. Farwell, or the Boston, Hartford & Erie Railroad Company through you?

A. No, sir.

Q. You don't mean to say so?

A. No, sir.

Q. You don't mean to say, then, that these coupons which were purchased at this time, or settled at this time, went through your hands?

A. I think they all did, sir.

Q. But you don't know anything about it?

A. Well, I do know something about it.

Q. Well, what do you know about it that would answer my question in regard to all of them?

A. I know it was stated there, in the presence of Mr. Farwell, on this occasion to which I refer, that everything was done, but the coupons were not delivered.

Q. Wait a moment, we will see about this. Were coupons sent to you more than once?

A. I think there were.

Q. How near each other?

A. Two or three months apart, I should think. I am speaking according to recollection—impressions.

Q. When was the first lot of coupons delivered to you?

A. My impression is, that shortly after this evening, I should think within a week or ten days, I know something transpired about coupons. My impression is, within a week or ten days; perhaps two or three days.

Q. I understood you to say, in your direct examination, that you were surprised there had been so much delay about the delivery of them; and yet you say they were delivered within a week?

82 A. I was surprised that some of them were delivered—those which came to me late.

Q. What did you do with the coupons which were delivered to you within a week after this contract was made?

A. Whatever coupons I received I forwarded forthwith.

Q. That is argumentative. I am asking about the fact and your recollection. What did you do with the coupons which were first delivered to you, within a week after this transaction?

A. I have not said positively any were. I think they were.

Q. Don't you know whether they were or not?

A. No; I can't say for certain.

Q. Then you may be mistaken about any being delivered to you?

A. I said yesterday I might be mistaken, and meant to be so understood. I think I received coupons twice. I sent the first package, and then sent the second package.

Q. Now you say you can't tell whether you received the coupons twice or not?

A. I can't say positively.

Q. You don't recollect the fact?

A. I don't; I have an impression about it.

Q. You have an impression, and that is all?

A. That is all.

Q. Of course you can't recollect anything about what you did with them, as you cannot recollect whether you received them or not?

A. Oh, I do remember sending them forward. I remember some person from A. & W. Spragues was in our office more than once about coupons, and I called on them or sent to them for coupons more than once. That I remember.

Q. I want to know, as this is an important matter which you are testifying about, whether you now remember, so that you can state it as a fact, that you received coupons twice; once within a week of this transaction, and once two or three months afterwards. Do you mean to swear to that as a fact, a matter of recollection?

A. I mean to say that I can swear that I received them twice; that is, two parcels of coupons, as distinctly as I remember receiving them once, and I remember going to the express-office once. That I remember. I don't remember going twice. I don't remember receiving coupons either time, as receiving them. I know some came to my office at one time, or at two times, and I remember the persons who brought them. There were three, four, or five young men in the office of the Messrs. Sprague, messengers, and some one, whom I recognized as such, came with a package once or twice.

Q. (By the master.) I don't quite get your idea, if you will excuse me, whether you recollect distinctly that you received packages of coupons at two different times. Be a little careful on that point, if you can.

83 A. That is my difficulty, your honor. I have an impression of receiving them twice—once early after this settlement.

Q. Have you any certain knowledge that you received any?

A. I have a distinct recollection of going to the express-office with one package.

Q. (By Mr. Wiggin.) That is all the recollection you have about coupons, is it?

A. No, sir; I remember looking at that label, and I remember taking it or sending it. I don't recollect taking it personally.

Q. (By the master.) The precise point is, whether you recollect one, and recollect another.

A. I recollect having one package, and reading the label, and saying to myself, "I won't open that"——

Mr. BROWNE. What you said to yourself is not evidence.

WITNESS, (continuing.) I should ordinarily open a package of as much value as I supposed this to be, but knowing where it came from, I was satisfied with the label, as Mr. Barry was when he received it; he receipted for it on the label.

Q. (By Mr. Wiggin.) The difficulty is just what the master has suggested here. It is an important matter, and we think we can show how the fact is. Did you receive any of those coupons within a week or two weeks of the time when this transaction took place?

A. My impression is, I did.

Q. I don't ask your impression; do you have any memory?

A. I have some memory; that is what my impression springs out of.

Q. What is your memory on that subject?

A. It is indistinct; but I remember receiving them, and doing something about them shortly after.

Q. Do you mean to say you remember receiving them?

A. My impression is that I received them.

Q. Do you mean to say that you have any recollection of those boys or anybody else coming to your office with coupons, or what purported to be coupons, within a short time after this transaction took place?

A. If it were not for Mr. Barry's letter, dated September, I should say that I remembered sending for those coupons and receiving them within ten days of the time of settlement, and I should think within two or three days.

Q. What has Mr. Barry's letter to do with it? That was in September.

A. That makes me know; I remember the label on the package; that I received a package a long time afterwards.

Q. That is, a letter merely acknowledging the receipt of those coupons in September?

A. Yes, sir.

Mr. WIGGIN. We want Mr. Currey to swear either that he does
84 not recollect, or does recollect, how the fact is. Impressions may be memory, reliable, or they may be nothing. If he has impressions, we want to know from what those impressions were derived.

The MASTER, (to witness.) You can state (it will save time) whether you have anything on your mind which you feel justified in saying is a distinct recollection of any other package of coupons between the time of the settlement or transfer of this claim, and this September which you now suppose was the time this other package went; whether you can say with any confidence, depending upon distinct memory, that you really did have another package between those times, or whether it is a mere general, vague impression that you might have or might not.

A. It is rather a general impression, not a distinct recollection. I have this distinct recollection, that the matter of coupons was stirred two or three times, and shortly after settled.

Q. (By Mr. Wiggin.) There has been a good deal stirring of this matter since, hasn't there?

A. I have not had much to do with it since.

Q. You got a receipt for the coupons which you sent in September to Mr. Barry?

A. That letter.

Q. Have you any other letter from him or Mr. Farwell, or anybody else, acknowledging the receipt of any other coupons?

A. I have not.

Q. Have you looked to ascertain?

A. I have; I looked a good while for that before I found it; I was not accustomed to keep correspondence generally; I could not find this at the time of the trial in June; I tried to find it in June and gave it up; I told somebody I could not find it; I have found all the correspondence I could find, and all the despatches, which I have preserved and collected, and brought them here on purpose for the benefit of both parties.

Q. What other coupons of July, '57, and January, '58, were outstanding at the time of this settlement?

A. I should suppose all that were due.

Q. Then a whole year's coupons were out?

A. I always so understood it, generally, and I guess it was so.

Q. Were there any other coupons out?

A. Not to my certain knowledge, but I think a few; I don't know where; scattered somewhere.

Q. What was the whole amount, as far as you understood, that was outstanding?

A. It would be all that was due on the bonds; I think it was $2,250,000 of 7 per cent. bonds, but I am not certain of the amount.

Q. There was a whole year's coupons due, that is, July and January?

A. Yes, sir.

Q. And some others, I understood you to say?

A. I think some.

85 Q. To come down to this, wasn't it understood that the whole amount of coupons out, including those held by the Spragues in 1868, was about $170,000?

A. I never put the figures together. I don't know as it would amout to that.

Q. Well, about that sum?

A. Yes, it would approximate to that sum.

Q. Did Mr. Bartholomew have any of those coupons?

A. Not to my knowledge. He might have had.

Q. You don't know whether he did or not?

A. No, sir.

Q. Who purchased your claim that you had against the Hartford & Fishkill Railroad?

A. Mr. Graves negotiated the matter with me.

Q. He purchased it for the Hartford & Erie?

A. I don't know anything more than the amount agreed upon between him and me.

Q. Did he purchase your claim or not?

A. I can't say whether he did or not. I know I agreed with him about the percentage. My impression is that I got a check from Mr. Dupee, the treasurer of the company.

Q. Do you know where the records of the Hartford, Providence & Fishkill Railroad are?

A. I suppose ——

Q. Do you know where they are?

A. No; I understood they were missing. I suppose they are in Hartford, some of the books. I sent to Hartford at one time to get a record, and could not get it.

Q. When did you first learn they were missing?

A. Well, it is within two or three years.

Q. In whose custody were those records when you last knew about them?

A. When I last knew about them, they were in the custody of Mr. Sperry, secretary or treasurer, at Hartford. I think I examined them while they were in his possession.

Q. Did you ever see them, or any of them, in the possession of Mr. Bartholomew?

A. I don't know that I ever did.

Q. Do you know whether you did or not?

A. I can't say. I might or might not.

Q. Did you ever see the records produced?

A. I don't think I ever did. I don't remember.

Q. You don't remember whether you ever saw them or not?

A. No, sir.

Q. Did you ever examine the records of the Hartford & Fishkill Railroad?

A. Some of them I did, sir, with a view to settle accounts.

Q. Did Mr. J. M. Belden ever act as secretary of the Hartford & Fishkill road?

A. I don't remember any such name. There might have been. I remember Mr. Bridgeman, who was treasurer for a long time.

Q. Don't you remember a man by the name of Belden, who was in Providence, and testified in the suit of Long *vs.* The City of Providence?

86 A. It appears to me there was a gentleman of that name there, but I don't remember at this moment that he ever acted for the corporation.

Q. (By Mr. Browne.) You were examined as a witness in the trial of the case of Long & Company *vs.* City of Providence, before Judge Shepley?

A. I was. I don't remember the name of the plaintiff, but I remember there was such a suit.

Q. In the phonographic report of that trial the following appears:

"Q. (By Judge Shepley.) But you forget a portion of your testimony. You have already testified you said to the Sprague, 'A portion of your account you have no security for, and therefore you should not claim the whole $161,000.' Now, what did you mean when you told them, 'A portion of your account you have no security for?'—Answer. At that time I referred to the 7 per cent. coupons, which I considered good." Did you so testify?

A. Yes, I did consider them good, and do now.

Redirect:

Q. (By Mr. Brooks.) You say you consider them good now. How?

A. They are secured by a mortgage on the road from Providence to Waterbury, Conn., and the rolling stock.

Q. (By Mr. Thurston.) You were asked in your cross-examination, whether you had ever heard it suggested by anybody that the Spragues did not hold these coupons which are in controversy in this case, other than as collateral for their indebtedness. I will ask you whether you recollect any conference between the counsel for the Messrs. Sprague and yourself in reference to a suit between Byron Sprague and Amasa and Wm. Sprague, in which the counsel for the Spragues claimed that these coupons in controversy had been taken up and held merely as vouchers? Do you know anything about that transaction?

A. I don't think I was ever present at such a conference between counsel, but I heard some of the counsel on one side or the other of that suit say that they were held as vouchers; when and where I don't remember.

Q. (By Mr. Holmes.) Who were counsel in that suit?

A. Mr. Gardner was counsel. I suppose for A. & W. Sprague.

Q. Was Mr. Abraham Payne in that suit at all?

A. I think not; I don't know for certainty.

JOHN M. BELDEN sworn.

Q. (By Mr. Brooks.) Are you, or have you been, in the employment of the trustees of the Hartford, Providence & Fishkill Railroad Company?

A. I am.

87 Q. How long have you been in their employment?

A. Well, ever since the road went into their hands.

Q. In what capacity?

A. In various capacities. At present I am clerk.

Q. How long have you been clerk?

A. I have acted as clerk of the trustees for six years.

Q. Have you the cash-book of the trustees here?

A. I have the cash-book of the corporation here.

Q. Have you the book in which the entries were made of cash in the year 1857?

A. Yes, sir.

Q. Will you turn to the entries in July, 1857, and see if there is any entry of any money paid to the city of Providence in July, 1857, on account of the city of Providence bonds issued to the Hartford, Providence & Fishkill Railroad Company?

Mr. HOLMES. Does the whole book come in as evidence?

Mr. BROOKS. No.

Q. (By Mr. Browne.) Is this the only book of the corporation you have here?

A. Yes, sir; the only book I have here.

Q. The only book you were told to bring?

A. Yes, sir. (Witness read from page 497 as follows:)

"Trustees Providence sinking-fund paid M. W. Gardner, city treasurer, difference of one-half per cent. on $500,000 bonds of this company, exchanged with the city of Providence for an equal amount of their bonds ..... $2,500."

Q. (By Mr. Brooks.) Do you know what was the whole amount of bonds that had been issued by the city of Providence to the Hartford, Providence & Fishkill Railroad Company?

A. Five hundred thousand dollars, I understood.

Q. What is the date of that entry?

A. July 7, 1857.

Q. Is there any entry of any payment by the corporation to the city of Hartford upon bonds; and, if so, will you state that also?

A. (Reading.) "Trustees Hartford City sinking fund, American bank-check on Park Bank, New York, sent F. A. Brown, city treasurer, being difference of one-half per cent. on $500,000 bonds of this company, exchanged with the city of Hartford for an equal amount of their bonds.. $2,500."

Q. Did you make these entries yourself?

A. No, sir; I was not treasurer at that time.

Mr. WIGGIN. We don't make any question but that was correct.

Mr. BROOKS. Do you make any question but what the money was paid?

Mr. WIGGIN. No.

88 Q. Now in regard to similar payments made on the 1st of January of the same year, 1857, and previous years?

Mr. HOLMES. We do not question any of those payments.

Mr. THURSTON. Then you admit that the course of practice up to this time was to pay one-half per cent. semi-annually to each of these cities?

Mr. BROWNE. Up to the date of the coupons in question?

Mr. THURSTON. Yes, sir, and including those coupons. It is admitted, then, that from the time of the emission of the bonds down to and including the July coupons for 1857, one-half per cent. was paid to the cities of Hartford and Providence, respectively, for the railroad company, the same being the difference between the interest on the city bonds and the interest on the railroad bonds, and the coupons were regularly exchanged down to this set of coupons in controversy.

Mr. BROWNE. Down to and not including the coupons in controversy.

Mr. THURSTON. Subsequently the Hartford coupons were exchanged.

Mr. HOLMES. But that was by Mr. Farwell.

Mr. BROWNE. It clearly appears that the July coupons were not, in fact, exchanged.

Mr. THURSTON. There can be no question about that. My form of statement excluded them.

Cross-examination:

Q. (By Mr. Wiggin.) Where is the journal belonging to this ledger?

A. It is in Hartford.

Q. Why did you not bring that, sir?

A. Because I had no call for it.

Q. Who directed you to bring this book?

A. A note from Mr. Brooks asked me to bring the book we had in Providence, I think.

Q. Is this cash-book copied from the journal?

A. No, sir; those are original entries.

Q. Where are the other books belonging to the Hartford & Fishkill corporation?

A. All I know of are in Hartford.

Q. What is there that you know of in Hartford?

A. Well, various books.

Q. Mention them.

A. Letter-book, journal, and ledger.

Q. Where is the record-book of the corporation?

A. There, in Hartford.

Q. In your custody?

A. Partly so; yes, sir.

89 Q. What do you mean by "partly so?"

A. These are controlled by Mr. Day.

Q. Are they in your possession and keeping?

A. I have the key to the safe in which they are.

Q. Then they are in your keeping?

A. So far as that.

Q. You could bring them here if you chose?

A. I could bring them here if I had permission.

Q. You could bring them if you chose to do so—there would be no objection. Did anybody object to your bringing this book?

A. Yes, sir.

Q. Who?

A. Mr. Day.

Q. You brought it, notwithstanding?

A. He finally gave his consent, after some objection.

Q. Is that your signature? (exhibiting paper.)

Mr. THURSTON. Hadn't you better ask him what it is?

Mr. WIGGIN. He signs this as "J. M. Belden, Sec'y," and it is headed as what it is.

Mr. BROWNE. The court will receive it, in pursuance of the principle that has been followed so far, under objection.

[Journal of the Providence, Hartford and Fishkill Railroad Company, p. 553.]

A. & W. Sprague, coupon account.

To A. & W. Sprague, for cash advanced by them at various times to

pay interest coupons, and charged this company on account, as per account-current rendered to this date on file.

Cash sent to Hoyt, Tillinghast & Co., June 30, 1857	$10,000 00
Do. Connecticut River Banking Company	5,000 00
Paid for interest coupons, July 1	10,410 00
Sent Hoyt, Tillinghast & Co. (2d)	6,000 00
Sent Connecticut River Banking Company	5,000 00
Paid interest coupons (3d)	350 00
Sent Hoyt, Tillinghast & Co	3,600 00
Paid for interest coupons, (6th)	140 00
" " (9th)	1,645 00
" " (14th)	857 50
" " (July 28th)	245 00
	$43,247 50

90 The coupons paid as above are retained by A. & W. Sprague, as collateral security for cash advanced to pay the July interest

A true copy.

Attest: J. M. BELDEN, *Secretary.*

Q. (By Mr. Wiggin.) Did you make that, sir?

A. I made it.

Q. Is that a true copy from the journal?

A. It is what it purports to be.

Q. Will you produce the journal here for 1857 and 1858?

A. I don't know that I can do so.

Q. Have you been instructed by anybody not to produce it?

A. No, sir.

Q. Will you produce that journal if you can?

A. I have no objection to doing so, if Mr. Day allows me to take it from the office.

Q. Who is Mr. Day?

A. He is president of the old corporation.

Q. You are clerk of the corporation?

A. I am clerk of the trustees.

Q. Are you not clerk of the corporation?

A. No, sir.

Q. When did you cease to be?

A. I never was clerk of the corporation.

Q. Well, secretary?

A. I never was secretary of the corporation.

Q. What do you mean by signing here, "J. M. Belden, Secretary?"

A. Secretary of the trustees.

Q. Did the trustees have possession of this journal at this time?

A. Mr. Day is one of the trustees.

Q. Well, sir, this is an extract from the journal of the Hartford, Providence & Fishkill Railroad Company?

A. Yes, sir.

Q. Was it in possession of the trustees at the time you made this extract?

A. I made that by direction or with the instruction of Mr. Day.

Q. And you will produce the book here if you are allowed to by Mr. Day?

A. Yes, sir; I have no objection personally.

Q. (By Mr. Thurston.) Is this the only entry on the journal relative to the coupon account with A. & W. Sprague?

A. I should think not.

91 Q. For whom did you make this?

A. I made it for Judge Bradley, of Providence.

Q. When?

A. At the time it is dated. Isn't it dated?

Mr. THURSTON. It don't seem to bear a date.

Q. (By Mr. Browne.) It was made within a year or two, wasn't it?

A. I should think it was.

Q. (By Mr. Thurston.) Is there any other entry upon the books which you now remember, in connection with any of the coupon accounts, as to the fact that such coupons are claimed to be held by the Spragues as collateral security for any advances?

A. I can't tell without the books.

Q. You have no recollection?

A. I have no recollection of it.

Q. Is this an account that stands by itself, or part and parcel of a general account?

A. It is part of a general account. At least, it is made from entries every day in the journal on their account.

Q. Do I understand that this is an exact transcript from the journal, in the way in which the entries are made, including the memorandum at the foot of the account?

A. I intended it to be so.

Q. Do you say also that there are in addition to this account, and in continuance of it, further entries of coupons?

A. I should say there were various entries throughout the book; I can't remember.

Q. Is this memorandum, "The coupons paid as above are retained," &c., interjected in the account as you recollect it?

A. I can't say in what form it comes.

Q. In whose handwriting does it appear to be on the original journal?

A. In the handwriting of Mr. Bridgeman.

Q. Who was he?

A. He was treasurer at that time.

Q. Do the charges contained in this account correspond also with the charges which you find in the general Sprague account?

A. I haven't looked over the Sprague account; it has never been in my hands.

Mr. THURSTON. It is so; isn't it, gentlemen?

Mr. HOLMES. I suppose it to include the Sprague account.

Mr. PARKHURST. I have examined the cash items, and they are the same.

Q. (To Mr. Parkhurst.) You find, as a fact, the same items, "$10,000," "$5,000," &c.?

A. Yes, sir; the footings correspond exactly to a certain part of the Sprague account, where it is marked on the margin, "Coupons held as collateral."

Q. (To Mr. Belden.) Is Mr. Bridgeman living?

A. No, sir.

92 Q. (By Mr. Browne.) You don't know personally when that entry was made at the bottom of the account?

A. No, sir; it was made before I had anything to do with the books.

Q. Mr. Thurston asked you whether this form at the bottom was interjected in some way. I didn't quite get the language of the question, and I did not understand your reply exactly. This purports to be a copy

from page 533 of the journal. To the best of your recollection is it copied from that page in the order in which the various portions of this paper appear on this copy?

A. The cash entries are.

Q. Including the memorandum at the bottom?

A. The memorandum at the bottom I can't say. My impression is, that it was put in in red ink across the side, but I am not certain.

Q. On the same page?

A. It is on the same page.

Mr. THURSTON. We want a copy of the entire coupon account—the whole thing—if we cannot get the books.

Q. (By Mr. Brooks.) Have you got a receipt that was given by the Spragues, January 1, 1857, for the amount of money received from the Hartford, Providence & Fishkill Railroad Company to pay interest on coupons?

A. It is in the office, sir.

Q. You did not bring it here?

A. No, sir.

Mr. THURSTON. It was put in at the trial in Providence, and we have a copy of it. Have you any objection to our asking whether it is correct or not?

Mr. BROWNE. You may use that phonographic report in lieu of the original.

"PROVIDENCE, *Jan.* 1, 1857.

"Received of the Providence, Hartford & Fishkill Railroad Company $65,960, to be applied in payment of coupons due on bonds of said company, and also on coupons due on bonds of the cities of Hartford or Providence issued by said company.

"A. & W. SPRAGUE."

GEORGE M. BARTHOLOMEW sworn.

Q. (By Mr. Brooks.) Are you one of the receivers of the Boston, Hartford & Erie Railroad Company?

A. Yes, sir.

Q. Do you know anything in regard to a claim of A. & W. Sprague & Company, or account against the Providence, Hartford & Fishkill Company?

93 A. I know they had a claim.

Q. State all you know in regard to it so far as your personal action is concerned; what you did in respect to it, if anything.

A. I should think it was in '64 and '65, and possibly in the early part of 1866, I had some interviews with A. & W. Sprague in regard to a settlement of it. I think I saw both of them. I saw less of Amasa, and my interviews with William were very short.

Q. Prior to stating what those interviews were, I will ask you whether you were trustee under a contract between the Hartford, Providence & Fishkill Railroad Company and the Boston, Hartford & Erie Railroad Company, dated August 28, 1863.

A. I was one of the trustees under that.

Q. Associated with whom?

A. Shubael Hutchins and John Hooker.

Q. Did you have a certain number of shares of stock of the Boston, Hartford & Erie placed in the hands of yourself and your co-trustees, for the purpose of being applied to the liquidation of debts?

A. Yes, sir.

Q. What was the number of shares?

A. The contract shows. I think it was 9,620. I won't be positive.

Q. What connection had you with the Hartford, Providence & Fishkill Railroad Company at any time?

A. About the first of January, 1858—I can't tell the precise time—I was appointed one of the trustees for the bondholders of the Hartford, Providence & Fishkill. Probably it was prior to that time.

Q. And you continued in the office how long?

A. Until this time.

Q. Had you any other office in connection with that road?

A. Not at that time. I have since then been appointed a director in that road.

Q. When?

A. I don't remember the year, sir. I wouldn't be positive it was since that time, but it is my impression it was some years after that.

Q. Now, will you proceed to state what you did in regard to the Sprague acccount, and in what capacity you were acting in any action you took in respect to it?

A. My impression is, that at the time I was negotiating with the Spragues I was president of the Boston, Hartford & Erie Railroad, and I endeavored to get at the lowest amount that they would take for their account in order to settle it; and the mode of settlement was, to pay for it in this stock; that is, not to pay them the stock, (to pay them if they would take it,) but to take that stock and sell it and apply the money towards paying the account.

Q. Now, what connection had you with the Boston, Hartford & Erie Company at that time?

94 A. Well, I was president part of the time from some time in the winter of 1863 until the summer of 1866, but not all the time. There was an interregnum part of the time. Part of the year '65 I was not president.

Q. You ceased to be president when?

A. In 1866, finally.

Q. What other connection had you with the Boston, Hartford & Erie Railroad? State the whole.

A. Well, I don't know as I understand the point of your inquiry.

Q. Were you a director?

A. Yes, sir. I was a director, of course; I must be to be president.

Q. From what time to what time were you president?

A. I must have been elected some time in the winter of '63–'64 a director, and continued so until, I think, the election of Mr. Frederick A. Lane as president, in September, 1870.

Q. State the transaction you had with the Spragues in respect to their account.

A. Well, my transactions, or attempts at transactions, were prior to this negotiation and settlement. I had nothing to do with this settlement that I recollect, directly or indirectly. The transactions were merely getting at the points of the account to be settled and how I could settle it. I never agreed with them as to the account or as to the amount of coupons, or that they had any right to hold them. I never agreed that the whole account was correct, and told them so, and never agreed that they had a right to hold those coupons. Mr. Day, the president of the Providence, Hartford & Fishkill Railroad, always claimed that they had no right to hold them.

Q. Mr. WIGGIN. You were asked what you did, not what you didn't do.

A. Well, I did dispute their right to hold them.

Q. Do you recollect what dispute there was in regard to the amount of the account, or any items in it?

A. The commissions were objected to; the mode of computing interest was objected to; and some items of charges on their account we couldn't agree with upon our books. Of course I was not in the management at the time the account was made up, and therefore I did not know about it.

Q. Do you recollect whether, in the account of the Spragues, respecting which you had the discussion, it appeared that the amount of the coupons in question here was charged as cash paid?

A. I can't say whether the word "coupons" or the word "cash" was used in the debit charge, but I should say, according to my recollection, that they appeared in the account as charged.

Mr. WIGGIN. In order that there may be no question about it, do you mean that the moneys which they paid to take up these coupons are charged as cash?

Mr. THURSTON. Yes, sir; there is no doubt of it. The account speaks for itself.

Mr. WIGGIN. And those were the coupons which the Spragues claimed to hold as collateral for that cash?

95 Mr. THURSTON. Yes, sir; there is no doubt about it.

Q. (By the master.) Do you know what that cash was by conversation with Mr. Sprague? Do you know what he claimed it was—what he paid it for?

A. I think in some cases it appears as "cash," and in some cases as "coupons." "September 13," for instance, "to one coupon;" and another, "to two coupons." The account shows "coupons" and "cash." When I was negotiating with the Messrs. Sprague the account was not made up to the time of final settlement, which appears here $161,000; it was at an earlier stage of the account, and did not include so much. The difference of interest, &c., would make it less. Here is "July 18, 1857, to cash paid for coupons, $10,410."

Q. (By Mr. Brooks.) Now allow me to go back. The question is, not what that account shows there, but whether, in the account respecting which you had the negotiation, there was a charge of the amount of the coupons in question here as cash paid.

Q. (By the master.) When was this?

A. This was some three or four years before.

Q. How much did they claim then?

A. It was over $100,000. It was a general running ledger-account.

Q. Did you see the items?

A. Oh, yes, sir.

Q. What did they claim?

A. Cash paid for notes, cash paid for coupons, and cash paid for a great many sundry items. They were general financial agents for the road at that time, and they had been advancing money.

Q. Do you recollect what they claimed on coupons?

A. I do not.

Q. What did you understand to be the meaning of this entry, "Paid for coupons?"

A. That they had advanced money to take up the coupons.

Q. (By Mr. Brooks.) What coupons?

A. The coupons of the Providence, Hartford & Fishkill Railroad Company.

Q. Any other?

By the MASTER: It is not certain that the credit should be applied in that way.

By Mr. BROOKS: That is the next question I am coming to.

Q. Was there any question in regard to the coupons which were retained by the Spragues being held as collateral security by them, in your discussion?

A. It was claimed that they had not a right to hold them as collateral security. It was claimed by Calvin Day and myself, more particularly by Calvin Day.

Q. On what grounds?

A. That cash was sent to them to pay those things.

Q. By whom?

A. By the Fishkill Railroad Company.

Q. How does that appear? Does it appear at all by the account, or only from his statement?

A. By the account on June 30, 1857, they credit the company $22,300. On the same day they charged the company $15,000. On July 1 they charged the company "paid for coupons $10,000." On July 2, $11,000.

Q. Now in the discussion what was Mr. Day's claim, and what was their reply to it in regard to that account?

A. Mr. Day was not present with the Spragues, that I recollect, in these discussion. Mr. Day's talk was merely conversation, separate with me.

Q. When you came to discuss the matter with the Spragues, did you or not communicate to them this objection which was made by Mr. Day, either as made by him or made by you?

A. I told them in general terms that we thought that they had not a right to hold all those coupons.

Q. Did they claim that they had?

A. I do not recollect their reply to that.

By the MASTER: They were not willing to surrender them to you; I suppose you found that out?

Q. Look at that memorandum at the bottom of that account; what do you say as to whether they did or did not claim it?

A. Their account that they presented says, "all coupons presented held as security 411 coupons not charged held as collateral security to account."

99 Q. Did you admit that claim, or dispute it?

By the MASTER: He has stated that they disputed it.

Q. These pencil memorandums on the account rendered here for coupons," "$857.50 for coupons" and "held for coupons," are in whose handwriting?

A. Those on the right are in mine, sir.

Q. Were those made upon the claim that they set up, that they were entitled to coupons, the memorandums made by you?

A. Yes, sir; made at that time.

Q. You were asked yesterday to what extent the items of the account were disputed. You answered, in regard to commissions and interest; can you state more in detail what the dispute was, what it covered? and if you made it up in figures at the time, and showed it to the Spragues, you may present your figures.

A. The Spragues held a large amount of notes payable by the corporation, which they had paid, and which by the books of the corporation are outstanding as bills payable. The clerk could not write them off from his bills payable, until he got them in hand. Therefore we

claimed that the Messrs. Sprague should deliver them up. There is Jan. 4, 1858, and at various dates they charged, "cash paid notes due this day." These were on the bills payable account of the corporation, and we claimed that they should deliver them up to the corporation, as they had been charged in account.

Q. If there was any talk about any settlement at any fixed amount, what was it; and what was to be done, in case of carrying out a settlement, as to the delivering up of papers?

A. Here is a memorandum I made at the time. I have not seen it for years before until since Saturday last. My memorandum at that time was this on the back of the paper.

By Mr. WIGGINS: Is that memorandum put in?

By the MASTER: He uses that to refresh his memory. You can have it if it is wanted, I suppose.

A. The backing is "A. & W. Sprague to surrender whenever paid." "Whenever the amount is paid or adjusted, Mr. Sprague should surrender notes of the Hartford, Providence & Fishkill Railroad amounting to , the bills payable, also the coupons charged prior to June 1, 1859, also coupons, as per their list, and any and all coupons they have. Also get deeds of lands and buildings. See their account. Get more coupons, say $100,000, for their list."

By the MASTER: Is that something that they agreed to, or something that you demanded of them?

A. This is what I told them we wanted them to deliver whenever there was a settlement. It is a memorandum which I communicated to one of them. I did not say that they agreed to it.

By the MASTER: That was a demand you made of them?

100 Q. Accompanying that communication, was there any suggestion as to the amount that was to be paid by the road on this account?

A. My figures at that time were $60,246.22. I cannot say that they agreed to it.

Q. Was that the subject of negotiation?

A. It had reference to the whole account.

By the MASTER: The balance of the account was more than that?

A. Yes, sir.

Q. Did you at any time subsequent to the settlement of May 27, 1868, have any interview with Mr. Farwell at Hartford in regard to the coupons of the city of Hartford, and did you do anything in respect to the exchange of those coupons in connection with him?

A. Mr. Farwell called on me one day—(interrupted.)

By the MASTER: State the time as near as you can.

A. I cannot; I have no data at present with which to fix the precise time.

By the MASTER: Was it after the account had been settled of the Spragues or before?

A. It must have been afterwards, sir. I went with him to the city treasurer.

Q. What did he do, and what did he say?

A. He said he had got the city of Hartford coupons, and the city treasurer exchanged coupons with him, and gave him the coupons of the road for July, 1857, and took the city of Hartford coupons in exchange.

Q. Can you state any conversation between you and Mr. Farwell in regard to this; how it took place, and what was said in regard to it?

A. I do not recollect about any conversation with Mr. Farwell and

myself, except the general remark that he had brought those coupons, and I told him he must go over and see the city treasurer. He did not demand the money of the city treasurer; but the city treasurer agreed to exchange, and did exchange them.

Q. Had you had any communication with the city treasurer before in regard to this exchange?

By Mr. WIGGINS: We object to that.

By Mr. BROOKS: He was acting in an official capacity, in regard to the exchange of these coupons. Now, if he gave notice, can we not prove that notice?

By the MASTER: Is it of any importance? It would hardly be worth while to take useless evidence. If he says that Mr. Farwell accepted it, that is superior to any negotiation. I do not think there is any serious objection to it, if you think it is of any importance.

By Mr. BROOKS: Mr. Bartholomew, acting in his official capacity, takes measures to carry out an understanding which was existing before.

By Mr. HOLMES: We admit in the answer that we did exchange with Hartford.

Q. I will take the admission then. Did Mr. Farwell claim that he owned those coupons?

(Objected to by Mr. Wiggins.)

Q. Now, I ask if I may draw his attention particularly to one thing: whether Mr. Farwell claimed that he was the owner of the coupons, or that he was acting for the corporation, or did say anything about it?

101 (No answer.)

Q. (By the master.) Was there any conversation as to whether he owned them or not.

A. I do not recollect any conversation, and cannot recall the conversation then had, except in general terms, that he called upon me, and said he had brought those coupons. I may with more thought refresh my memory. He might or might not have stated it. I do not now remember if he stated it.

By the MASTER: You have the benefit of his conduct, so far as that was inconsistent with any claim of ownership.

Q. I will ask you in regard to the transfer of the 7,349 shares which were held for the payment of the debts. You made a transfer of those shares as trustee?

A. I would suggest that the exact number of shares may be ascertained to a certainty pretty soon. I see by consulting the book that it was 7,349 shares stated.

Q. What was that stock?

A. It was what was called debt-stock of the Boston, Hartford & Erie Railroad.

Q. Explain how it came into your hands.

A. There was 9,620 shares of the Boston, Hartford & Erie Railroad stock set apart in the hands of Hutchins, Hooker and Bartholomew, as trustees, to liquidate just claims against the Hartford, Providence & Fishkill Railroad under the contract of 1863; see section 7. Of that amount there remained apparently in our hands 7,349 shares.

By the MASTER: At what date?

A. In 1868. It seems to have been transferred November 7, 1868, to John S. Eldridge, Henry N. Farwell, and J. W. Converse, trustees, by vote of the directors of the Boston, Hartford & Erie Railroad, and by authority of the supreme court of Connecticut.

Q. What had you done—in the contract the whole number being 9,620 shares appropriated to take up the claims—what had you done with the 2,271 shares, the difference between the 7,349 and the 9,620?

A. It had been used to take up claims against the Hartford, Providence & Fishkill Railroad Company, either by applying the stock itself, or selling the stock, taking the money and paying the claims.

Cross-examination:

Q. (By Mr. Wiggins.) We want to get at your trust relations to certain parties. Can you give the exact date when you were appointed trustee of the Hartford, Providence & Fishkill Railroad Company?

A. About February, 1858.

Q. Was that appointment in writing?

A. It was on the records.

Q. Was the appointment in writing?

A. I received notice of it in writing, according to my recollection.

Q. Where is the notice?

A. It is among my papers somewhere.

Q. You say it was about the 1st of February, 1858. Was it before or after the Fishkill Railroad went into the hands of trustees?

A. It was at the time.

102 Q. Was it at the same time?

A. It went in during the months of December, 1857, and January, 1858. I was appointed in place of Judge Williams, about February afterwards.

Q. At the time you were appointed one of the trustees, the road was in the possession of the trustees, and went into their possession, as I understand, the November or December before?

A. It went in practically in January. Judge Williams had got quite old, and declined to act, and therefore they appointed me in his place.

Q. I understand you to state that you were appointed trustee. I want you to state what came into the possession of the trustees besides the material property of the corporation: the cars, engines of the road, &c.

A. I suppose that it took everything that was embraced in the mortgages.

Q. Did you take anything except the corporeal property of the road and the possession of the real estate; did you take possession of any papers, contracts, leases?

A. We took all the papers that were left in their charge. They did not take the corporation itself, perhaps; that remains with Calvin Day, president. The corporation remained, of course. They could not take the corporation.

Q. I want to get at what the trustees took possession of, and what they had possession of, all of it, and I shall follow it up and find what you have received since that time, and what has got into your possession. If it is material to show what you took possession of and what the mortgage covers, why of course you can produce it. We will not trouble you about that. We merely want to know the fact. What did you and the trustees of the Hartford, Providence & Fishkill Railroad come into possession of, take possession of, and keep possession of?

A. I should say, generally, lands, deeds, papers; everything relating to the thing necessary to take possession of the road, and to carry it on, and operate it for the bondholders.

Q. Did you, at the time that you took possession of that road, or went into it, as one of the trustees, have entire possession; or did you, or any

of you, take into possession the paid coupons of the mortgages of the Fishkill road prior to July, 1857?

A. That may be a law question, and not for me to answer, as to whether they legally took possession.

Q. Is it a law question for you to state whether or not you had it in your possession?

A. I cannot answer whether I took as trustee or director. I simply know that I took care of them. I was director of the Hartford, Providence & Fishkill Railroad at that time or soon after.

Q. The question I asked you was, whether you had in your possession, or took into your possession, as trustee, the paid coupons of the different mortgages of this railroad.

A. I cannot answer that officially.

Q. You are under oath.

By the MASTER: Let me know whether this Fishkill road had been assigned to trustees.

103 A. It was delivered by a deed of surrender by the directors to the trustees.

By the MASTER: That included the rolling-stock and all the property?

A. I cannot say just what it did include; the paper must show.

Q. The trustees then took the road in 1858, and operated it after that?

By the MASTER: You can inquire, sir, after that, what he received; what probably it would be considered he received as trustee.

Q. I shall have to repeat my question to you, sir. Did you, when you became a trustee of that corporation in the place of some trustee who had resigned, have in your possession as trustee, or did the trustees have in their possession as trustees, the paid coupons of the Fishkill Railroad which had become due, and had been paid prior to July, 1857?

A. Unless they are within the deed of surrender and mortgage, I should say that I did not; that they remained with the corporation.

Q. Did you have in your possession as trustee the paid coupons prior to July, 1857, and have you got them now?

A. I have considered that the books of the corporation—(interrupted.)

Q. I do not ask you what you have considered. I ask whether you have had them, and have got them now or not. You must know that fact.

A. I do not know what to answer, sir.

Q. Can you not tell whether you have got a certain thing in your possession?

A. I cannot tell legally. I can tell you whether a thing is in my hands or not.

By the MASTER: The witness is not obliged to say in what capacity he held them unless he knows; but he is obliged to say whether he had them; and if they came into his possession after the road went into his hands as trustee, the legal presumption is that he was a trustee; whether he had them after he took possession of the road as trustee, would make him have them as trustee.

Q. Can you state whether you had them in your possession, and have them in your possession now, the paid coupons of the mortgages of that road which had become due and had been paid prior to July, 1857?

A. If it is a question whether those are in my possession to the extent that I would deliver them or produce them to-day, I would say that I could not do so without the consent of other parties.

Q. State whether you did receive them.

A. It is a legal question which depends upon the construction of the mortgage, and I do not want to give a legal construction to it.

By the MASTER: I have no doubt about its being a proper question. I cannot see now any reason why he should not answer it. I do not see how it would injure him or anybody else.

A. The books and papers all remained with the trustees of the corporation for some years.

104 Q. I want you to answer my question. Have you got in your possession the paid coupons of the Hartford, Providence & Fishkill Railroad that had become due and were paid by that corporation prior to July, 1857?

A. I cannot tell you, sir.

Q. Do you mean to swear that you do not know whether you have or not?

A. I cannot tell you.

Q. Do you mean to say that you do not know whether you have or not? Do you decline to answer?

A. It is not that I decline to answer, but because I do not know, I cannot swear.

Q. Did you have them in your possession?

A. I never saw them, except so far as I was auditor, and saw them casually upon the books.

Q. You have always been the managing trustee of the board of trustees?

A. No, sir.

Q. You are now?

A. Yes, sir.

Q. How long have you been managing?

A. Since Mr. Robinson's death. I do not know how long ago that was.

Q. Did you ever take any trustee account?

A. Yes, sir.

Q. Any accounts of your management of this trust?

A. Yes, sir.

Q. Where are they?

A. At Hartford.

Q. What do they consist of?

A. Journals, ledgers, cash-books, pay-rolls, all papers pertaining to freight matters.

Q. Will you produce those books before the master?

A. If the master requests them. They can all be examined in Hartford by a commission. These books contain an account of coupons that have been paid since the trustees took possession. They do not contain an account of coupons paid before.

Q. Then you have got the books of account, and books showing the management of this trust by you and the other trustees, which you will produce or allow anybody to examine?

A. They can examine them, they have a right to do that in law. Any proper court can do so.

Q. Have you ever rendered any account of the management of this trust to any parties?

A. Yes, sir; I have rendered it annually every year to the railroad commissioners.

Q. Have you got the coupons which have been paid by you as trustee since January, 1858, in your possession—the coupons which have been paid I do not ask who by.

A. We have got the coupons which the trustees have paid since 1858.

Q. Has anybody paid any of those coupons since January, 1858, except the trustees of the road?

A. I suppose that the Boston, Hartford & Erie Railroad may have paid some.

Q. The question which I ask you is, has anybody paid any of the coupons of the Hartford, Providence & Fishkill Railroad except the trustees of the Hartford, Providence & Fishkill Railroad?

A. I suppose——

105 Q. I do not ask you that; I ask you what is within your own knowledge. Has anybody, save the trustees of the Hartford, Providence & Fishkill Railroad, paid any of the coupons of the Hartford, Providence & Fishkill Railroad?

A. My impression is that the Boston, Hartford & Erie Railroad have paid some of those coupons, and their books should show it.

Q. Do not your trustees' books show it.

A. They only show such as the trustees have paid.

Q. That will show them how many of these coupons have been paid by the trustees?

A. Yes, sir.

Q. But it will not show anything about the Boston, Hartford & Erie Railroad?

A. No, sir.

Q. Do you not know that the Boston, Hartford & Erie Railroad have not paid any of the coupons of that road?

A. No, sir.

Q. Did you not know that you have got in your possession all the coupons not including January, 1858?

A. No, sir.

Q. Do you know that you have not?

A. I think that the Boston, Hartford & Erie Railroad have some coupons.

Q. We know that they have got some, some $14,000 worth; I think more than that sum; some that they have bought with money. Have they been paid for the Hartford, Providence & Fishkill Railroad, or have they been bought and held?

A. I consider that they were bought by the Boston, Hartford & Erie Railroad. They were liquidated and cancelled.

Q. You say that your books contain an account of what coupons have been paid by the trustees since January, 1858. It seems to us that the witness is bound to show to us those books. What we say was, that with some exceptions, which we began specifically to show, the trustees have paid all those coupons since that time.

A. I do not know that the associate trustees would consent to have those books brought here; there (are) a great many of them.

By the MASTER: If we have a recess of three days, perhaps you can examine them there in Hartford.

A. They have not objected to any proper parties examining them there. It would require several books.

Q. You do not want any concealment about that?

A. No, sir.

Q. Will you produce them?

A. I have answered that question.

By Mr. THURSTON: If it will save any embarrassment to them, we will say that they shall have the fullest opportunity to examine them at

106 Hartford, or if they were here, under the same understanding as with reference to the coupons, and the associate trustees do not object. I know of no reason why they should object. We want to save

the custody of the books. It would be productive of great embarrassment in these conflicting questions.

A. I should be perfectly willing that the associate trustees shall bring them all here; I should be satisfied that they should be thoroughly examined by any committee appointed by the judge.

Q. I will ask you this question: It is understood that those books are to be produced here?

A. I beg pardon; I do not know under what conditions it will happen. At any rate, there can be no objection to their being examined there.

Q. I will ask you this general question: Have all the coupons of that road, since and including July, 1858, and up to the present time, been paid? I do not ask you by whom; but have they all been paid?

A. No, sir; they have not all been paid.

Q. What part have not been paid? What year and what parts of a year? I am not asking about these coupons in controversy. I say, since July, 1858, have all the coupons due at that time, and which have become due since, been paid?

A. Your question is a distinct one. The coupons all having been paid, would imply the coupons of every bond which has been outstanding since July, 1858. By our books there are coupons of 1859 amounting to $437.50 not yet come in. So it runs along every year more or less of coupons not come in. In 1861 there was $420. In 1862 there was $472.50.

A. The amount is very small.

Q. Give them to us, if you please; we would like your memorandum of all the outstanding coupons. It is legitimate, and we have a proper purpose about it, as we shall satisfy the court. Give us what you know about outstanding coupons, and I will ask you this question: You have some way or means of ascertaining what coupons are outstanding and to what amount?

A. Yes, sir.

Q. Now give us the amount outstanding, not including those in controversy?

Q. Now please give the amounts which were outstanding in the several years?

A. In 1859, $437.50; in 1861, $420; in 1862, $472.50; in 1863, $420. I should remark that this is a list taken in 1867. It may vary a little as taken off to-day.

Q. Does it include 1868?

A. No, sir; it was taken off at the close of 1866. If you want it as a matter of fact, perhaps we will take it off anew.

By Mr. WIGGINS: All we care about is including 1868.

A. I should have to take it off anew, sir; this is an old memorandum.

By the MASTER: You had better let him get his memorandum renewed.

107 Q. Have you got in your possession all the coupons of this road which have been paid, including July, 1858, by the trustees or by the corporation, not including anything that you say the Boston, Hartford & Erie Railroad have purchased; have you got those coupons in your possession?

A. We should have them, sir.

Q. Have you got them in your possession?

A. They may have been stolen or carried off.

Q. You suppose you have them?

A. I suppose we have.

Q. You have no doubt of it?

A. I have no doubt of it.

Q. Are you not equally sure that you have the coupons in your possession about which I asked you, that have been paid before July, 1857?

A. There is no doubt that they are on hand in somebody's possession.

Q. Did the corporation ever pay the coupons which the Sprague had in July, 1857, and January, 1858, or did the trustees ever pay them or offer to pay them, those coupons in controversy?

A. The trustees never paid them.

Q. Did the corporation ever pay them, to your knowledge?

A. I was not a director at that time.

Q. Who was the treasurer of the corporation at that time?

A. I think Mr. Bridgman, but I am not sure when he died. I do not understand that they claim that they were paid by anybody except the Spragues.

By Mr. HOLMES: We propose to show that the railroad never paid the Spragues; so that, as a matter of fact, no money ever came out of the treasury of the railroad to pay these coupons.

Q. Now, if those coupons which are in controversy, held by the Spragues, had been paid at that time by the trustee or by any other agent, to whom would the possession of those coupons rightfully belong?

A. I understood the Spragues to be the financial agents; they were receiving and paying out money. The coupons ought to have been delivered to the road, the same as the notes payable.

Q. They belonged to the corporation, did they not? These payments took place five or six years before the Boston, Hartford & Erie Railroad had anything to do with that road, these payments by the Spragues?

A. Yes, sir; 1857 or 1858 would be five years before 1863.

Q. Then upon what ground do you set up here as receiver of the Boston, Hartford & Erie Railroad; as receiver of coupons paid in July, 1857, and January, 1858, five or six years before the Boston, Hartford and Erie Railroad had any connection whatever with this road?

A. That they were bought and settled for by the agent of the
108 Boston, Hartford & Erie Railroad and paid for, as I supposed; that the accounts of the Spragues were settled. They were in the Spragues' hands. The account of the Spragues was settled by the Boston, Hartford & Erie Railroad.

Q. What I want to get out by this question which I desire you to answer is, by what right, or how could you, as receiver of the Boston, Hartford & Erie Railroad at this time, have any right to the custody of receipts and vouchers, showing transactions which took place or payments made five or six years before the Boston, Hartford & Erie Railroad had anything to do with it?

A. The coupons were charged in the Spragues' account, and when the Spragues' account was paid, then the coupons went with the account.

Q. But you said the coupons had been paid by the Spragues as agents of the company, and that they had no right to hold them?

A. I do not recollect that I stated it in that language, because a large portion of these coupons in the account were coupons of their own bonds, which they charged in the account.

Q. Have you not stated in your direct examination that you denied the right of the Spragues to hold those coupons?

A. I said part of them. I meant to say that Calvin Day claimed that the Spragues could not hold all those coupons, because money was advanced to them to pay.

Q. Did you not say, "I did dispute the right of the Spragues to hold these coupons?" Did you make any distinction?

A. Perhaps I said so. If I did, then I did.

Q. Do you mean to change your testimony now?

A. I thought I said that we disputed their right to hold all the coupons.

Q. What ones did you dispute their right to hold, and what ones did you not dispute their right to hold?

A. I did not go into the distinction or separation of them.

Q. How could you go into its right if you did not?

A. Because we expected to settle the whole account, and did not go into a division.

Q. Did you know what coupons they held?

A. Only by their report.

Q. They reported to you what they held; which of them that they reported to you did you dispute their right to hold?

A. It was a general right. I did not say that they should hold none of them.

Q. You take the ground, and it is understood from the general course of evidence, that the Spragues, acting as the financial agents of your corporation, paid them; for what they did as agents they did for the principal and as principal, and being paid by the corporation you claimed that they should surrender them up, didn't you?

A. A portion of them. We did not go into the question of just what portion.

109 Q. Why didn't you go into it?

A. I did not think it was necessary to decide just what portion.

Q. Did you claim that any should be returned on that ground?

A. I was not a director when these transactions took place, and was not conversant with the facts regarding these coupons.

Q. Did you or not, at the time of that discussion with the Spragues about these coupons, dispute their right to hold them?

A. I told the Spragues—(interrupted.)

Q. Can't you answer that?

A. No, sir; not in the way you ask it.

Q. Answer it in your own way.

A. I said to the Spragues that we thought and claimed that they had not a right to hold all of those coupons—that a part of them belonged to the company in the same way in which the notes belonged to the company which they had charged to the account, and which stood on the books as bills payable.

Q. The ground was that they belonged to the company because the company paid them?

A. The company had not paid them. The Spragues paid them.

Q. In the same way that they paid those coupons?

A. They paid some of the coupons.

Q. Do you know about the vouchers?

Q. I say I did not go into the distinction.

A. What amount did you dispute, and what amount did you not dispute?

Q. I did not divide the amount. I expected to settle the whole account, and therefore I thought it was immaterial.

Q. Is this the way that you wish it to be understood by the court—that up to this moment you can't tell which of those coupons they had a right to hold, and which they had not—that is, the Spragues?

A. I can't tell now, from memory, sir. We went into it at that time, but I can't tell from memory at all.

Q. But there were some that they had a right to hold; you can't tell what, or how many?

A. A portion of the coupons charged in that account were coupons upon bonds which they themselves owned.

By the MASTER: What Mr. Wiggins is trying to get at, and what I should like to know, is, if you can now tell, what of these coupons belonged to one class, and what to the other; how much he paid for the corporation which you say would belong to them after they were paid, and what were his own coupons, from his own bonds?

A. I was not a director in 1857 and 1858, and therefore did not understand those matters. I could not now tell you unless I should go
110 back to the books of former directors. My statement to them was general. Calvin Day said some portion of those coupons ought not to be charged in our account at all.

By the MASTER: Now Mr. Wiggin wants to know what amount belonged to one class and what to the other.

A. I can't divide it.

Q. Is Calvin Day alive now?

A. Yes, sir.

Q. I can see very readily here that some $40,000 of those coupons are directly upon their own bonds.

A. Does the account designate which are upon their own bonds? That may possibly become important. At any rate, we should like to know it.

Q. In June, 1859, they charged upon 416 coupons; and in May, 1860, they charged upon 401 coupons. This is some time after 1857.

A. They speak of them as due January, 1858.

Q. I understood at the time that those were coupons upon bonds owned by them.

A. There were 416 coupons when?

Q. There were 416 due July 1, 1857, and 401 due January 1, 1858.

By Mr. WIGGINS: Is that account in that the witness has?

By Mr. THURSTON: Yes, sir.

Q. These were coupons which you admitted that the Spragues had a right to hold and keep at the time of your discussion?

A. I don't admit that I did admit that at that time.

Q. I supposed that those were coupons on bonds which they owned and held. I could easily ascertain that fact.

A. Now, I want to go back to the question where we started.

By the MASTER: Have you given all that you thought they had a right to retain?

By Mr. WIGGINS: We want to do so.

By Mr. HOLMES: The accounts are both in. If there is any discrepancy it can go for what it is worth.

By Mr. WIGGINS: I am going to show this account which we put in—the account which we took by assignment from the Messrs. Sprague. I understand that they are precisely alike so far as coupons are concerned.

Q. Take that account where there is a statement of coupons marked "held as collateral," and the account which are the coupons in controversy, and state to the court whether you can designate or point out which of those coupons you have disputed the right of the Spragues to hold, and which you admitted that they had a right to hold.

A. I did not dispute any particular coupons that I recollect.

Q. Then you mean to say that you did not make any dispute?

111 A. I did make a dispute, but it was general.

By the MASTER: Can't you have him designate which belonged to the one and which to the other?

By Mr. WIGGINS: Your honor has not seen this account which I now have. I will exhibit to you, (explains the account to the master.)

Q. Tell now which of those coupons, mentioned in that account, you do now designate and point out as the coupons which you denied the right of the Spragues to hold when you were having your discussions with them.

A. 416 coupons, $14,525, due July 1, and 401 coupons, due January 1, 1858; $14,750, and 348 coupons, due July 1, 1858, $13,440. Those I suppose to be upon bonds belonging to them. They were their own bonds. They had a right to retain them, but they did charge them in account. If the account was paid, of course the coupons would go. Of course, until the coupons were paid they belonged upon the bonds which they held, as I supposed. The others appear to have been charged in general account as cash paid for coupons, as if they bought them.

Q. Did you deny their right to hold them?

A. I did not deny anything explicitly or separately. I deny generally the right to hold the coupons. I did not go into the account to tell them which I did or did not.

Q. You just merely, at that time, spoke to them, that you objected generally to their holding coupons, but you did not know what particular class or amount you objected to?

A. I did not say so to them.

Q. What did you say?

A. I said to them, generally, "I object to your holding all of those coupons."

Q. Is that all you said?

A. Yes, sir.

Q. You did not mean by that that you objected to his holding any of them, but you meant some of them?

A. Yes, sir; some of them.

Q. Did you designate what particular ones you objected to?

A. I did not do so.

Q. He did not ask you?

A. I have said that so many times that I need not repeat it.

Q. Did you specify to him and tell him, or did he ask you, what ones you objected to, or undertake to do it?

A. If the reporter will read the answers which I have given before, it will do just as well as to answer it again.

Q. Well, you can give it about the same.

A. I said to the Spragues, "We claim that you have not a right to hold all those coupons."

Q. (By the master.) Meaning by that "some of them?"

A. Yes, sir.

Q. Now, what did the Messrs. Spragues say to that?

A. I don't recollect, sir.

Q. Did they make no answer?

A. I don't recollect what they said.

112 Q. Did they make any answer? Do you remember that they said anything?

A. I don't remember whether they said anything or not. I don't recollect that they said anything. I said before, if I recollect aright, that they claimed them because they appeared so in their account.

Q. (By Mr. Holmes.) Did the Spragues express any willingness to abate any of their claim to any of the coupons?

A. They expressed a willingness to throw off something in the amount of their account.

Q. That was not my question. Did they express any willingness to abate or give up any of those coupons? Did they offer to give up any of the coupons?

A. No, sir; they did not offer to do that. They offered to discount from their account. It was on the general account.

Q. Now, I want to go back to the question out of which this coupon matter started, and that is this: If the corporation or the trustees in July, 1857, and in January, 1858, had paid these coupons, to whom would the rightful possession of them belong as evidence or vouchers of that fact?

A. They would properly belong to the corporation if they paid them to the Hartford, Providence & Fishkill Railroad—those being the coupons of 1857—if the corporation had paid them. I understood your question to relate to the coupons of 1857.

Q. It was July, 1857, and January, 1858.

A. If they had been paid by the trustees in 1858 they would belong to the trustees, of course.

Q. What was paid by the corporation belonged to the corporation, and what was paid by the trustees belonged to the trustees?

A. I suppose so.

By Mr. WIGGINS: We want to call attention to what passed about this contract in 1855; I think it was that year.

By the WITNESS: Did I understand your question to be as to whom they belonged then or belonged to now?

Q. The receivers of the corporation never made any demand upon you for property prior to that?

A. No, sir; I should think not.

Q. They have as much right to those which they have got as they have to these, and on the same grounds, have they not?

A. No, sir; I should think not exactly the same. If they are cancelled, that will be different.

Q. Now, I want to ask you another question: Has the Hartford & Erie Railroad ever had any possession of the Hartford, Providence & Fishkill Railroad?

A. Between Waterbury and Providence, no, sir; it is in trustees' hands.

Q. The Hartford & Erie Railroad never have had possession of any part of the Hartford, Providence & Fishkill Railroad?

113 A. Not that I am aware of, sir.

Q. Have you ever rendered any account of your trusteeship to the Hartford & Erie Railroad Company?

A. We have rendered them statements whenever they have asked for them.

Q. Have you ever rendered any account of the management of the Hartford, Providence & Fishkill Railroad to the Boston, Hartford & Erie Railroad?

A. We have rendered accounts whenever they have asked for them.

Q. (Same question repeated.)

A. We have rendered accounts.

Q. When was it?

A. I don't recollect the dates.

Q. How many?

A. I don't recollect.

Q. Was it more than one?

A. Oh, yes, sir. It was for several years.

Q. What years?

A. I can't recollect them. I should say all of them.
Q. Whom did you render them to?
A. To the officers of the corporation.
Q. Was it in writing?
A. It was in print and in writing both.
Q. More than one, for several years, you say?
A. I should say for all the years.
Q. Did they call for the account which you rendered?
A. I think they have asked for accounts.
Q. The Boston, Hartford & Erie Railroad never have had possession of any part of the Hartford, Providence & Fishkill Railroad, have they?
A. No, sir; not between Providence and Waterbury.
Q. Have they of any part of it?
A. The Hartford, Providence & Fishkill Railroad corporation extended west of Waterbury. They had possession of that part of it so far as the charter was concerned.
Q. Had the Boston, Hartford & Erie Railroad ever had any actual possession of any part of the Hartford, Providence & Fishkill Railroad?
A. The Hartford, Providence & Fishkill Railroad charter extends west of Waterbury.
Q. I am not talking about charter.
A. I say that between Waterbury and Providence they have not had possession of any part of it.
Q. How much is built besides that?
A. That is about three-fourths graded beyond Waterbury, as I understand it.
Q. Have they ever had any possession of all or any part of that part of the Hartford, Providence & Fishkill Railroad which has been completed and is running?
A. I should say not, sir.
Q. You had it as trustee, and still have it as trustee?
A. I have it as one of the trustees.
Q. Do you now concede, or have you conceded or admitted, the right of the Boston, Hartford & Erie Railroad to the possession of the Hartford, Providence & Fishkill Railroad?
114 A. In its present status we do not, sir.
Q. If they have no right to this railroad and the possession of it and its property, what right have they to these coupons?
By Mr. THURSTON: That is a question of law.
A. They have a right to the road by paying the mortgage. They have the franchise. The Boston, Hartford & Erie Railroad has a right, by paying up the mortgage, to take the road.
Q. You say they never did have possession of the road? You don't admit their right to the possession of the road?
A. Not in the present status.
Q. Upon what ground do you dispute their right?
A. We hold it as trustees for the bondholders of the Hartford, Providence & Fishkill Railroad.
Q. You always have, have you not?
A. Since 1858, yes, sir.
Q. And you resist the right of possession on the part of the Boston, Hartford & Erie Railroad?
A. I can't say that we resisted very much. They have never tried very hard to get it.
Q. You deny their right to it, and they have never had possession of it?

A. We deny their right in the present status.

Q. What do you mean by the present status?

A. The right to a thing and the having possession of it are different things. They may have no possession, but may have the right to take it under certain conditions.

Q. This executory contract has never been executed? The conditions never have been performed?

A. They have, some of them; perhaps not all.

Q. The conditions mentioned in the contract for a lease and a deed have never been performed by the Boston, Hartford & Erie Railroad, have they, so that they would be entitled under that contract? (Interrupted.)

A. I do not say that, sir.

Q. Have the conditions which are stated as the consideration of that executory contract for a lease and deed been performed by the Boston, Hartford & Erie Railroad, so as to entitle them to any of the benefits of that contract?

A. Some of them have been performed and some have not. Whether they are entitled to it or not, I don't know, sir.

Q. You state as a matter of fact that some have been performed and some not. Now, what have been performed?

A. I should want to go through with the contract and see. It is a long contract. The contract for a conveyance was made in 1863, August 28.

Q. That was the date of it, was it not? Now, I want to ask you whether the Boston, Hartford & Erie Railroad paid the coupons which came due on the following January—and trace it up every year to the present time—the coupons of January, 1864, of the bonds of the Hartford, Providence & Fishkill Railroad.

115 A. Oh, no. The Boston, Hartford & Erie did not. The trustees for the bondholders paid them.

Q. Now we will go into another branch of your testimony in regard to this debt stock. In the first place, we want to ask you how many kinds of stock, and how much of each kind, there was of the Hartford, Providence & Fishkill Railroad issued at the time of that executory contract of August 28.

A. About one and a half millions of common stock and about five hundred thousand of preferred; about two millions in all.

Q. That had been issued by the corporation?

A. Yes, sir.

Q. Was it all outstanding at the time of this contract of August 28, 1863, or has any been issued since that time?

A. I do not know of any issued since the Spragues held a part of it; but it was regularly issued to them, I suppose.

Q. How much of that stock is now outstanding, according to your best means of knowledge?

A. There has none of the stock been cancelled by the Hartford, Providence and Fishkill Railroad. The Boston, Hartford & Erie Railroad are the successors, and of course take all the rights and benefits of that which is not cancelled. That portion which has been exchanged for the Boston, Hartford & Erie Railroad stock ever belongs to the Boston, Hartford & Erie Railroad or to be cancelled.

Q. How much of this stock is now outstanding, aside from what is passed over to the Boston, Hartford & Erie Railroad?

A. There is about 1,600 shares of preferred, and about—I find that I shall have to make an estimate before I can say further.

Q. Can you not give the proximate amount?

A. No, sir, I can't by memory and I have not my figures here to do it. My impression is that it is about 4,000 or 5,000 shares of the common; but it is a mere impression.

Q. I understood you to say that the corporate organization is still kept up?

A. There are no meetings. Calvin Day was the last president elected. There have been no meetings for several years.

Q. How much was this Fishkill common stock worth at the time of this contract of August 28, 1863, and during the succeeding fall? What was its market value at the time of the contract of 1863, or about that time?

A. Well, I can hardly say there was a market price for it.

Q. It was not worth anything?

A. Oh, yes, sir; there were no sales of it; I do not know what the market price would be.

Q. Did you own any of the stock at that time?

116 A. Yes, sir, a small amount.

Q. Was it a hundred or a thousand shares?

A. It was not a thousand; I was not so poor as that.

Q. Was it a hundred? Did you purchase any of this after the contract of August, 1863?

A. I think I did, sir.

Q. Were you at that time a director in the Boston, Hartford & Erie Railroad?

A. After 1863; I was a director in 1864.

Q. At what time did you become a director of the Boston, Hartford & Erie Railroad? how long after this contract of August, 1863?

A. I cannot tell the date now; it was in the winter of 1863-4.

Q. Were you a director in the Fishkill Railroad at that time?

A. I do not recollect the date; it was about that time. I was a trustee in 1863.

Q. How much was Hartford & Erie Railroad stock worth at that time?

A. I do not know, sir.

Q. Do you know of any sales?

A. Not by memory, sir.

Q. Did you sell any?

A. I cannot remember, sir.

Q. Within a short time of the date of this contract, or the execution of it August 28, a certain number of shares were transferred to you and to two other gentlemen as trustees, a portion of which you have designated as debt stock. A portion of it was conveyed as exchange; do you know the exact time of the transfer of that stock?

A. No, sir; I suppose it must have been about the time of that contract.

Q. Who held the possession of the certificates of that stock which was conveyed to you and two other gentlemen as trustees?

A. The other gentlemen were Mr. Hooker and Mr. Hutchins. I held the certificates, sir.

Q. Have you any means of telling the exact time of transfer of that stock to you?

A. I have not the original certificate of 9,620 shares. You can tell by the certificate when that came. The original certificate of the other stock I have not.

Q. Can you tell whether it was before or after? what they say was the time of the delivery of the deed?

A. No, sir; it can be ascertained by the transfer-book.

Q. Were you engaged yourself or with any other gentlemen in buying or getting hold of the Hartford, Providence & Fishkill Railroad stock and exchanging it for the Boston, Hartford & Erie Railroad stock after this contract?

A. Not as a business; no, sir.

Q. Were you engaged yourself, or did you as a matter of fact, yourself or associated with any other individuals after that contract
117 was made, buy up and get hold of this Fishkill stock and exchange it for the Boston, Hartford & Erie stock, the Fishkill stock being worth nothing and having no market price?

A. I did not say the Fishkill stock was worth nothing; I said there was no market price current for it.

Q. Did you, or not, after that contract was made for exchange of this stock, yourself, or in association or partnership with any other gentleman or gentlemen, buy up and get hold of this Fishkill stock and exchange it for Boston, Hartford & Erie Railroad stock?

A. Not associated with others, that I recollect. But I will state in reply to your question, that I did buy some small amounts of Fishkill stock as they came along, and exchange, not as an individual.

Q. Do you not know the fact that the Boston, Hartford & Erie Railroad, at or about that time, and for some time afterwards, (I mean August 28, 1863,) was selling for from $35 to as high as $50 a share?

A. Not as a matter of fact I do not know it, sir.

Q. Did you not know it at that time?

A. I know I did not sell any.

Q. Did you not know that the stock of the Boston, Hartford & Erie Railroad, which you were exchanging for Fishkill stock, which had no market price, did you not know that that stock was selling all the way from $35 to $50 a share?

A. I did not know it, sir.

Q. What do you mean by that?

A. I heard a rumor that somebody had sold some at $35, but I did not know it; but it was a long time after that; I should think not in 1863. It must have been 1864 or 1865.

Q. You say the Hartford, Providence & Fishkill stock had no market price?

A. I say no current market price.

Q. Do you not know the fact that, just previous to the time of this contract, 1,000 shares of Fishkill Company's stock was sold for $1 a share?

A. No, sir; I do not know it.

Q. Did you hear of such a fact about that time?

A. No, sir; not that I recollect of.

Q. Did you not, after this contract was made, exchange Fishkill Company's stock for Boston, Hartford & Erie stock; and if so, to what extent?

A. To a small extent; and when I did I paid the same price for Fishkill stock that the quotation price was for Boston, Hartford & Erie stock, within a fraction. My intention was to accommodate sellers of stock, and take the stock and sell that.

Q. Were you associated with any other gentlemen in transactions of that sort?

A. No, sir; not in that or anything of that sort.

Q. I will ask you whether you were not interested with Edward Green and Joseph W. Clark in buying up and getting hold of

118 Fishkill stock, and exchanging it for Boston, Hartford & Erie stock, at the time you were trustee, acting for all these roads, and director of the Boston, Hartford & Erie Railroad.

A. I do not recollect their buying Fishkill stock in the way you speak of. They bought some of these debts and exchanged for the stock.

Q. We will ask what became of the balance of the stock, the difference between the 7,920 shares and the other number.

A. I have an entire list of the debts at home. They all went to pay the debts.

Q. We want to ask you what other debts were outstanding at the time that that seven hundred and odd shares were transferred to these trustees; and how many of them, if any, have been paid since; and what debts of the Hartford, Providence & Fishkill Railroad are outstanding now, leaving this Sprague matter out.

A. There were several outstanding claims at that time—at the time that the Sprague debt was settled, or about that time. Perhaps I am wrong; let me reflect. I did not know at the time the Sprague debt was settled that the Boston, Hartford & Erie Railroad were buying up those claims, and I was out of the concern, practically, and I do not know.

Q. Are there any debts outstanding against the Hartford, Providence & Fishkill Railroad now, that you know of, except this Sprague debt, that existed at the time of that contract of August 28?

A. I cannot say. Mr. Graves was buying that up. I do not know whether he did, or not, buy them all up.

Q. Do you not know that there are two judgments against the Hartford, Providence & Fishkill Railroad?

A. There was a judgment to Hoyt, Tillinghast, and somebody.

Q. Do you know the amount of it?

A. No, sir.

Q. Do you mean Rice, Waterman & Tillinghast?

A. I think that was the firm. It was less than $10,000 or $11,000 when I knew it.

Q. Was there not a judgment in favor of a man by the name of Andrews?

A. I do not recollect the name of Andrews. I had an impression that it was the name of Arnold. I think it was Arnold; I will not be sure.

Q. Do you know what amount that was?

A. It was a good deal less than the other claim.

Q. Then these two judgments are now outstanding against the Hartford, Providence & Fishkill Railroad, and are covered by the debts that existed at the time of this contract?

A. I do not say they are outstanding.

Q. You do not know that they have been paid?

A. I cannot swear that they have, sir.

Q. Well, now then, we will not pursue this matter about the stock at present, under the decision of the master, but will go back to this matter of these coupons and this interest. I want to ask you whether or not you did not state in writing, in May, 1868, that these coupons which are now in controversy, with others, were outstanding and unpaid against the Fishkill Railroad.

119 A. I do not know what I stated in writing then; I may have done so, but I should say this——(interrupted.)

Q. Did you not state in May, 1868, that there was about $170,000 unpaid interest on the Fishkill mortgages outstanding?

A. No, sir; it can be ascertained by the transfer-book.

Q. Were you engaged yourself or with any other gentlemen in buying or getting hold of the Hartford, Providence & Fishkill Railroad stock and exchanging it for the Boston, Hartford & Erie Railroad stock after this contract?

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Q. You do not know that they have been paid?

A. I cannot swear that they have, sir.

Q. Well, now then, we will not pursue this matter about the stock at present, under the decision of the master, but will go back to this matter of these coupons and this interest. I want to ask you whether or not you did not state in writing, in May, 1868, that these coupons which are now in controversy, with others, were outstanding and unpaid against the Fishkill Railroad.

119 A. I do not know what I stated in writing then; I may have done so, but I should say this——(interrupted.)

Q. Did you not state in May, 1868, that there was about $170,000 unpaid interest on the Fishkill mortgages outstanding?

A. I say to-day that there is more than that amount outstanding by the books of the corporation, which have not come in, and are not written out.

Q. You did so state?

A. I did not say that I stated it in that way.

Q. Just look at the paper now shown you, and at the signature and at the name of the magistrate before whom you took the oath.

(Witness examines the paper marked K.)

A. Yes, sir; I see what I stated here.

Q. Is that your signature?

A. Yes, sir.

Q. You swore to it before that gentleman?

A. Yes, sir.

Q. I will read it: "The commissioners, Judge Bigelow, Emory Washburn, and Samuel Ashburner, propose certain questions to G. M. Bartholomew, of Hartford, Connecticut," &c. The answer to these questions is embodied in this affidavit:

"I, Geo. M. Bartholomew, of Hartford, Connecticut, on oath do depose and say," &c. "Sworn to on the 25th of May, 1868."

How did you come by this $170,000 unpaid interest on those mortgages?

A. I think that was made up in this way: that there were outstanding by the treasurer's book of the coupons of the road about $200,000. My figures now show that in 1867 there were $205,000. That, we supposed, after the settlement of the cities of Providence and Hartford, would return to the road, which would leave it about $170,000. I should say that whatever is outstanding by the treasurer's book, what he has not got in hand——(interrupted.)

Q. I want to ask you whether you did include in that $170,000 these Sprague coupons.

A. I did not look at that at all. It would be whatever was outstanding by the account of the treasurer, which we supposed was outstanding.

Q. How did you make up that account?

A. It was in the way that I have spoken, from the treasurer's book. The treasurer's book at that time showed $205,000 outstanding. I knew that $420 a year was upon those bonds, those bonds which had not come in in any one year. I added to that the coupons of the two cities, which Mr. Day and myself supposed when cancelled would leave us $170,000.

Q. Do you or not know that that sum named there included those coupons which were held by the Spragues?

A. It must upon that basis have included them, because it included the coupons which were not written upon the books of the treasurer.

120 Q. You have no doubt that it included these Sprague coupons; if you understood that they had been paid, why did you in your report to the commissioners under oath say that they were outstanding? It is very evident that these trustees' books are of the utmost importance.

By the MASTER: I presume they may be important.

A. My impression is, that the transaction with Farwell under those coupons was later than that.

Q. Yes, sir; that was made the 25th day of May; it was at the time they were in the hands of the Spragues; at that time you made report

to the commissioners that there was outstanding unpaid interest on those bonds?

A. They do outstand by our books, sir. Until we had them actually in possession, they were outstanding coupons under that mortgage——

Q. In any of your interviews with the Spragues was Mr. Graves ever present with you?

A. I cannot recollect, positively; I think he was at one of them, but I am not positive about that.

Q. Did you not bring the matter of these Sprague coupons to the notice of the directors of the Boston, Hartford & Erie Railroad a great many times?

A. I have no doubt I spoke of it; I think I did.

Q. Did you not urge upon the directors, or any of them, the necessity of getting that Sprague claim and suit out of the way in some way or other?

A. Yes, sir.

Q. Did you ever notify or suggest, when you were talking about that Sprague claim and these coupons to the directors, suggest to them, or any of them, that these coupons were not the property of the Messrs. Sprague, but had been paid, and they had no claim to them, or any of them?

A. I do not know whether I did or not, sir.

Q. I asked you if you ever stated it. You say you brought it to the attention of the directors several times. Did you ever state to the directors at those times that the Messrs. Sprague had no claim to these coupons, and that they belonged to the company?

A. I cannot recollect whether I did or not, sir.

Q. You urged upon the directors the necessity of getting that claim out of the way several times?

A. Yes, sir.

Q. You cannot recollect whether you suggested, in those conversations, or at those times, that the Messrs. Sprague had no claim or right to those coupons?

A. I cannot recollect what I said about that; I cannot say whether I did that at an official board meeting, but I did speak of it among the directors.

Q. State what was the financial condition of the Boston, Hartford & Erie Railroad up to May 25, 1868; did they have any money?

121 A. They had bonds and stock.

Q. Did they have money?

A. I was not there; I could not say. I think they must have had money. They were selling stock and bonds, as I understood it.

Q. Do you mean to say that the Boston, Hartford & Erie Railroad had any money in their treasury in May, 1868?

A. I was not the financial manager, and I cannot say whether they had or not.

Q. Had you not advanced a large sum of money yourself to that corporation up to that time?

A. I had at various times more than I wish I had.

Q. You advanced because they had none of their own?

A. For various reasons; sometimes because they—(interrupted.)

Q. Did you ever have any conversation with Mr. Farwell about this purchase of the claim of the Spragues by him?

A. I do not recollect the conversations.

Q. Did you not, at several times, urge Henry N. Farwell to buy that claim?

A. I have spoken to several of the directors. I could not recollect any of them to-day. I told them that it was desirable to buy up not only that claim, but all the claims against the Hartford, Providence & Fishkill Railroad. I do not know that I talked more particularly about that than about all the other claims.

Q. Did you not state particularly about the Sprague claim in several interviews with Mr. Farwell, and advise him to buy and hold it, rather than have the Spragues buy it to carry on this suit against this corporation?

A. I do not recollect particularly, sir.

Q. Do you recollect what the conversation was?

A. No, sir; because my conversation was meant to be with the various directors.

Q. Do you recollect about having any conversation with Mr. Farwell himself about the purchase of this claim?

A. I do not recollect, sir; I might, and might not.

Q. Did you notify Mr. Farwell in any of those conversations, or suggest to him, that the Messrs. Sprague claimed these coupons where they had no right to claim or hold them? Did you raise or suggest any question as to their title?

A. I do not recollect my conversations with Farwell at all.

Q. You never raised any question or suggestion as to the right of the Spragues to hold those coupons?

A. I cannot say whether I did or not.

Q. Is not your recollection distinct?

A. No, sir. I went to Europe in 1867, and got out of the Boston, Hartford & Erie Railroad, and tried very hard to forget these things. I had something else to think of.

122 Q. The coupons that were exchanged, what was the difference, if any, in interest between the railroad bonds and the city of Hartford?

A. It was one per cent.

Q. Then the coupons that Mr. Farwell took up for the Hartford, Providence & Fishkill Railroad would give him one per cent. more than the other?

Testimony of Gov. Emory Washburn.

By Mr. BROOKS: Before proceeding to examine the governor I will put in the act of 1867, May 27, of the Commonwealth of Massachusetts, entitled An act to aid the construction of the Boston, Hartford & Erie Railroad, and refer especially to the 6th section, (reads the 6th section.)

Q. Were you appointed a commissioner of the State of Massachusetts under the statute of 1867?

A. I was one of three—Judge Bigelow, Mr. Ashburner, and myself.

Q. When were you appointed?

A. I could not fix the date precisely, but in the spring of 1868. I have got my commission at home somewhere, I suppose.

Q. Did you as commissioner have any conference with Henry N. Farwell in respect to the financial condition of the Boston, Hartford & Erie Railroad Company?

A. Yes, sir, a great many. The history of the condition of that road, so far as we understood it, was this: Mr. Farwell was vice-president, and, as we understood, was the chief agent in bringing the matters before us for our consideration. We had many interviews with him, I could not tell how many, but they were frequent. The papers, accord-

ing to my recollection, of some fourteen or fifteen corporations were placed in our hands to settle this matter. It was proposed that the State should loan to the Boston, Hartford & Erie Railroad $3,000,000 upon receiving as security therefor $4,000,000 of what are called the Berdell mortgage bonds, made by the Boston, Hartford & Erie Railroad to Berdell, Gregory & Davis; before they would do that it was desirable, as we understood, to ascertain the condition of those roads, how much they owed, what debts were outstanding, in order to know that this mortgage of $20,000,000, the Berdell mortgage, was practically the first mortgage upon the property which resulted to the Boston, Hartford & Erie Railroad through these various corporations. That led us to make as thorough investigation of the outstanding claims as we could make. We made various inquiries of Mr. Farwell, and once or twice of Mr. Eldridge, according to my recollection. We took measures to give notice to all persons having claims against the Boston, Hartford & Erie Railroad, or any of those roads to bring them in to us, that we might know what they were, in order that we might know that the property that was to be held by the Berdell mortgage trustees was substantially free. A great number of persons, or several persons, made returns to us of having claims due to them from these various roads, and
123 of claims that they had, and in regard to, I think, every one of those claims we had more than one interview and conversation with Mr. Farwell, and I should think some of them a great many times.

Q. Did Mr. Farwell produce any papers to the commissioners, showing the condition of the liabilities of the road, and, if so, what were they, and when were they exhibited to you? State whether you had any conferences in regard to them, and if so, what they were.

A. I have no recollection now of any papers that Mr. Farwell produced to us, except the whole mass of papers, which was large indeed, which I took some two or three weeks upon. There were papers that came to us through the mail, or through the directors, to Mr. Farwell, of what the claims were existing. We inquired about it of Mr. Farwell. We found in quite a number of these corporations that they had given mortgages, and had issued bonds, mortgages purporting to cover bonds. And we therefore could not tell how many bonds had been issued, and we had occasion to inquire into that.

Q. Do you recollect an affidavit of Thomas E. Graves, produced to the commissioners?

A. Yes, sir; very well.

Q. Have you the original?

A. Yes, sir, I have got the original, and if you want to know what some of the claims that were brought in against the company were, I could recite some of them. I have the letter of Mr. Sprague in answer to—(interrupted.)

Q. Will you produce it?

A. (Producing paper marked O.) There is the paper that I received as an original. I suppose it is so. I do not know Mr. Sprague's handwriting. Mr. Farwell, among other things, told us that the Spragues had a claim against the company. They are spoken of in that way, "The Spragues of R. I.," and that letter we received.

Q. Do you recollect whether you received it by mail, or how it came to you?

A. I cannot say how it did; but at any rate it was the subject of conversation, the amount and all. When Mr. Farwell told us there were a great many claims, Mr. Farwell, when the thing was talked over about the claims, said of such and such claims, "There is nothing due there;'

"We don't owe that;" and "I have talked with Mr. Graves about that." When we spoke of the Sprague debt, he said that that was a thing that they could take care of, and that that would be settled, that that would be satisfied; and afterwards told me that it was satisfied, and that they had settled it, and we made our report accordingly, as if that was not an outstanding claim. This claim of Sprague's is $245,000; and when we made our report to the governor and council, which is published, the manuscript of that was handed to Mr. Farwell, according to my recollection, to be carried to the governor and council. The governor then had a second communication with us, not being satisfied entirely with the results to which we had come. He wanted some further evidence of it, and thereupon we got, as I understood from Mr. Farwell, the affidavit or deposition of Mr. Graves as to the amount which was due on these various claims. There were quite a number of them, and the amount, be-
124 sides Mr. Sprague's, was, if I remember right, some $75,000. I do not know. That had been talked of. There was one claim which was much larger than that, but I do not remember the name. It is on a list here. This led to several interviews between Mr. Farwell and the commissioners, in order to satisfy the governor and council that the corporation had the means of building that road and paying the claims upon it and completing the road. The object was, as I said, to remove all outstanding claims, so that that Berdell mortgage should be the first one. In our investigation we found, for instance, that there was due by the Hartford, Providence and Fishkill Railroad that amount, $2,055,000, and that was to be paid for out of the bonds. The provision of the Berdell mortgage, was, among other things, to pay off those. That we understood. We understood there were these outstanding claims, and in order to satisfy the governor and council that there was the means of completing the road and paying the debts that were a legal claim upon the road, out of this $20,000,000, because that was the most available money, we got Mr. Farwell to get Mr. Graves' affidavit; and according to my recollection, he brought us the affidavit. At any rate, it was in our hands, by Mr. Graves, and he, Mr. Graves, had, in my opinion, before that, made statements to us twice, I think. At one time Mr. Graves stated to us what the claims were, and among others, stated the claim of Mr. Sprague. Then he made a statement in which I believe the claim of Mr. Sprague was omitted entirely. Then I've got the deposition, this affidavit of Mr. Graves, and this is the paper which I now hand to Mr. Brooks, the paper in which you will find that he states that Mr. Sprague's debt has been taken up in the interest of the road.

Q. Do you refer to the claims of A. & W. Sprague? Waterman, Tillinghast & Co., and Andrews & Co., are all taken up in favor of the Boston, Hartford & Erie Railroad since the presentation of the claims.

A. Yes, sir; he says about $6,000, if I remember right.

Q. Below there is a review of the different items or claims against the road. Following that is this: (The affidavit bears date of September 19, 1868.) "So far I do not believe the Boston, Hartford & Erie Railroad liable to pay any money on the claims."

A. We made upon the strength of that a report. Mr. Farwell, as I said before, had stated to us that the Sprague claim had been paid. He told us at first that they were going to pay it; there did not appear to be any dispute about it. He denied the indebtedness. He then afterwards told us that it was this, and then produced this, and upon the strength of that we made the second report to the governor and council, which I believe Mr. Farwell carried to the governor and council, which was afterwards published, in which we state that we have Mr.

Graves' affidavit, and that there was of those claims only about $6,000 if I remember right.

By Mr. BROOKS: I have the report here brought down from the governor and council.

A. Here is another paper here. After we made that second return to the governor and council, then we understood from Mr. Farwell that he and Mr. Eldridge, and some other man, I think it was Mr. Whitney, were called before the governor and council to explain still
125 further, in order to satisfy the governor that there were really no outstanding claims against the company except the Berdell mortgage, and this mortgage that the Hartford, Providence & Fishkill Railroad held. The Berdell bonds were specifically appropriated to pay that and the mortgage, a printed copy of which I have here. It was merely that they were to have these bonds, the trustees were to give them up to the corporation as fast as they accrued, excepting those outstanding bonds, and in this interview, which is reported and published and furnished to us by the directors, which Mr. Farwell and Mr. Eldridge, and it seems Mr. Converse, had with the council, they stated the sum to be $6,000.

By Mr. BROOKS: I will put this paper in; it may be retained in your hands under the arrangement we have here, and subject to be referred to. We will put a copy in the place of it. This is Mr. Graves' affidavit, which is marked Exhibit L.

By the WITNESS: Here is the earliest paper of Mr. Graves' which was furnished to us. It says, F. Andrews paid, and then under it A. & W. Sprague, do., do. (Exhibiting paper marked Exhibit M.) That is given us by Mr. Graves. The judgments that have been referred to as outstanding are these two judgments of Waterman & Tillinghast, and F. H. Andrews, which are here cited as paid.

Q. Is that in the handwriting of Mr. Graves?

A. Yes, sir; that was an earlier statement, and was not under oath; and then, in order that we should be able to state to the governor and council that we had our information under oath, Mr. Graves' affidavit was procured, and on the strength of that we made report to the governor and council, and after that those directors that I named had an interview also.

Q. Did you ever have any conference with Mr. Farwell in respect to this paper in Mr. Graves' handwriting?

A. According to my recollection, Mr. Farwell procured those papers. I do not recollect myself of Mr. Graves ever giving me personally any papers. Mr. Farwell was the man that had communication between us and the directors generally, and with Mr. Graves. I do not remember receiving any papers from Mr. Graves. You asked me when we were commissioned; it was before February 14, because I got a communicarion from Mr. Graves to us on February 14.

Q. You say in your communication to the governor you referred to this affidavit of Mr. Graves?

A. Yes, sir.

Q. You say that in communication subsequently, notwithstanding what you had procured and sent to the governor, this paper which I now show you was used.

A. I do not know about that, sir. That is a matter for the governor. It is from them. I have no recollection of ever seeing this paper, sir. We had a paper from Mr. Bartholomew as a part of the evidence on which we acted in making our second report to the governor and council. Under the advice of Mr. Farwell, as I recollect, Mr. Ashburner

126 was to see Mr. Bartholomew in regard to the amount that was actually due, and also the sinking-fund; and September 18 we received a letter from Mr. Bartholomew, which was countersigned by Mr. Day, which was also placed in our hands; and we had reference to it when we made our second report to the governor.

By Mr. WIGGINS: If that letter is put in, we would like to see it.

A. We give the substance of it in our communication to the governor, on the 40th page. (The paper is marked Exhibit P.) Here is another statement from Mr. Graves, which was also furnished to us, the date of which I have not got.

Q. Would not the affidavit of Graves probably cover the whole of these statements?

A. That is the final one; the first from Mr. Farwell told us what is outstanding. Mr. Graves told us that that had been paid; but that was not done under oath. In the second statement (Exhibit N) he says, "The others are settled, except Harris, Way Brothers, Lapham & Whipple," that makes the $5,053. Then he gives the amount in definite claims, claims denied, &c., &c. Then, upon the strength of that, we have the affidavit taken, so that we have it from Mr. Graves three times that those debts have been paid by the corporation.

Q. Was this known to Mr. Farwell?

A. All these papers were known, and everything was stated to the governor and council. My impression is, that he took the paper; he had the first copy, and my impression is, the second. The result of the whole was this published pamphlet, which embodied the whole, and which the directors caused to be published. (Exhibit N is an explanation of claims against the Boston, Hartford & Erie Railroad. The Sprague claim is marked Exhibit O. The Bartholomew matter is marked P.)

Q. Should you have made your certificate, except upon these representations of these claims being satisfied, to the governor and council, as commissioners?

A. We considered it our duty to ascertain what was outstanding, which would be a claim upon the property, and if we had not been satisfied that that had been extinguished, except what appeared on our returns there, I should not, for one, have made any certificate, and I do not believe the others would, because it was talked over at the time.

Q. You understood there were claims of the Hartford, Providence & Fishkill Railroad, which were to be taken up by the Boston, Hartford & Erie Railroad?

A. I understood that there were bonds outstanding.

Q. I mean debts of the Hartford, Providence & Fishkill Railroad which were to be taken up by the Boston, Hartford & Erie Railroad?

A. None, except the bonds which were outstanding, $2,055,000; and at one time it was stated to us that there was $170,000 interest on those bonds, and we reported that. That was all, according to my recollection; all there was outstanding upon the road, upon any of the property, this $2,055,000, and the $170,000, and against that it was stated over and over again there was a sinking-fund to pay this in-
127 terest of something like $220,000, $193,000 if I remember right.

Besides, I ought to say it was also said in the interviews which were had with us, that somebody had the stock of the road as security, or Mr. Bartholomew as trustee had the stock of the road, out of which it was to be paid, or collateral security rather.

Q. Do you know about the funds that the corporation had in hand as represented by Mr. Farwell?

A. I knew that Mr. Farwell came and stated to us that he had

$2,000,000, which he received at one time, and had the checks of the Erie Railroad for $1,045,000, or something over a million of dollars, which was the subject of investigation afterwards, and for which I gave the paper.

Q. About what time was that?

A. When he was in possession of those notes and $2,000,000 he had before July 21; and I went to the bank in order to be certain; because we reported under date of July 31, if I remember right, that there were then $2,000,000 on hand; and to be certain that it was so, I went myself and saw the entry in the books of the bank that there was a deposit.

Q. To whose credit was it?

A. My impression is, that it was the railroad; and I understood Mr. Farwell that he managed that, and made the deposit and managed it. And afterwards he told us that he had taken out so much. We inquired what had become of it. He said that they were not going to see it lie there dead, and that they had taken it out and used it, some portion of it, not the whole.

Q. Besides the $2,000,000 the check of over $1,000,000?

A. Yes, sir. I could tell you the amount. We answered the governor in regard to it. He put the question. It was an acceptance of the Erie road. The truth was, as Mr. Farwell told us and as the papers show, they took $5,000,000 of the Berdell bonds and paid $4,000,000 for that $5,000,000 of bonds. They took $2,000,000 in cash, and took acceptances for $1,570,000, because we queried what had become of the balance. We never saw a trial balance, and we did not know what it was. It did not balance in our minds I remember perfectly well.

Q. What was the date of this fifteen hundred and odd thousand dollars?

A. I understood that they received it at the same time they received the $2,000,000 cash, and the acceptances for $1,570,000, and that they were one and the same thing; and when we returned to the governor and council, which was July 31, I stated then that they had the $2,000,000 on hand to our knowledge, and that we had seen those acceptances and were satisfied that they were genuine.

Q. You have spoken of the bonds of the Boston, Hartford & Erie railroad that they held to pay the underlying mortgages, such as the Hartford, Providence & Fishkill railroad?

A. Yes, sir.

Q. What was the amount of these bonds? I ask in regard to the Berdell bonds held under the provisions of the mortgage to pay off the Hartford, Providence & Fishkill mortgage and other mortgages.

128 By Mr. WIGGINS: How is that material to anything in controversy here?

By the MASTER: That is very remote, I should think.

A. I could merely state what Mr. Farwell told me what those bonds were held for in regard to the Hartford, Providence & Fishkill Railroad.

TUESDAY, *October* 10, 1871.

Mr. Brooks produced the records of the Boston, Hartford & Erie Railroad Company, and put in the following votes: Stockholders' records, September 11, 1867. Vote choosing Henry N. Farwell director.

Directors' records, September 11, 1867. Voted, that John S. Eldridge, Mark Healey, Henry N. Farwell, Henry Thompson, and Thomas E. Graves, be, and they are hereby, appointed an executive committee of this board of directors, with power to do and perform all things this board may do, subject to its approval.

By-laws, § 2. The president, if present, shall preside at the meetings of the board; and in his absence a president *pro tempore* may be chosen. The president shall have the general superintendence of the officers, other than the directors of the company, its agents, and business, and devote so much time to his duties as shall be necessary.

Directors' records, September 11, 1867. Then Samuel Hall, jr., was by ballot unanimously chosen treasurer of the corporation.

Directors' records, October 10, 1867. Voted, that the vice-president, with the advice of the president or executive committee, may do all acts and things now by law, or by vote of the corporation or board of directors, committed, or that may be by law or votes of the corporation or directors committed, to the president. Henry N. Farwell was lawfully and unanimously elected vice-president of the company.

Stockholders' records, September 8, 1869. Voted to proceed to the choice of directors, and did so proceed. The committee after receiving, sorting, and counting the votes, reported the whole number cast to be 97,938, and that the same were cast unanimously for the following-named persons:

E. C. Sherman, Henry L. Pierce, John S. Eldridge, Mark Healy, Henry N. Farwell, Joseph W. Clark, James W. Converse, James S. Whitney, George M. Bartholomew, William H. Chandler, Roger Averill, Wareham Williams, Edward Harris, Samuel Currey, Henry Thompson.

Directors' records, September 14, 1869. Then, on motion, proceeded to the choice of a vice-president, and on ballot Henry N. Farwell was unanimously elected vice-president.

Then, on motion, proceeded to the choice of a treasurer, and on ballot Samuel Hall, jr., was unanimously chosen treasurer.

Then voted that John S. Eldridge, Mark Healy, Henry N. Farwell, James S. Whitney, and Henry Thompson be an executive com-
129 mittee of this board, with power to do all things the board may do, subject to its approval.

Directors' records, January 12, 1870. On motion, voted, that Henry N. Farwell is added to the finance committee, as a member thereof.

Directors' records, December 21, 1869. Voted, that a finance committee, to consist of four directors, to be appointed by the president, be raised. Then the president appointed Messrs. Rice, Nichols, Healey, and Pierce on the finance committee.

On motion, voted, that the finance committee shall hold daily sessions at 2½ o'clock afternoon, or such time as they shall agree, and two shall constitute a quorum. It is authorized to have charge of, and jurisdiction over, the fiscal transactions of the corporation in all such cases where such matters are not hereafter by special vote committed to some other committee or person. It shall keep a record of its doings by the secretary of the company, one of its members or other person by the committee appointed. It shall act by the major vote of its members present at its meetings. A copy of its vote, signed by its secretary and furnished the treasurer or other proper officer or agent, shall be authority and direction to such treasurer, officer, or agent to do what is voted. It shall present its records at any meeting of the directors on request, for examination and information.

Stockholders' records, September 9, 1868. The committee attended to its duty, and reported that there had been cast for directors 120,592 votes, and that they had been cast severally and wholly for the following-named persons, thereby unanimously electing them directors for the ensuing year, to wit:

John S. Eldridge, Mark Healey, Henry N. Farwell, Joseph W. Clark,

O. J. Rathburn, Edmund G. Howe, Wm. H. Chandler, James S. Whitney, James W. Converse, Henry Thompson, Edward Harris, Geo. M. Bartholomew, Thomas Tolman, William H. Chandler; and they were severally declared unanimously elected.

Directors' records, September 15, 1868. At the meeting of the directors on the 15th of September, 1868, present Messrs. Eldridge, Healey, Farwell, Whitney, Converse, Rathburn, Bartholomew, Tolman, and Chandler, then, on motion, proceeded to choice of a president for the year ensuing, by ballot; and John S. Eldridge was elected president unanimously. Then, on like motion and form, proceeded to choose a vice-president; and Henry N. Farwell was elected unanimously. Then, on like motion and form, proceeded to choose a treasurer; and Samuel Hall, jr., was chosen unanimously. Then, on like motion and form, John S. Eldridge, Mark Healey, and Henry N. Farwell were chosen an executive committee, with power to do all things the board may do, subject to its approval.

Directors' records, September 14, 1869. Then, on motion, proceeded to the choice of a treasurer; and on ballot, Samuel Hall, jr., was unanimously chosen treasurer. Then, on motion, proceeded to choose an assistant treasurer; and, on ballot, H. S. Barry was unanimously chosen assistant treasurer.

130 Directors' records, August 14, 1867. Voted, that the president is authorized to use of the stock in the hands of George M. Bartholomew and others, trustees, to buy any claims existing against the Hartford, Providence & Fishkill Company upon such terms as he may deem just and proper.

Paper marked Q, put in by Mr. Brooks, and vote referring thereto, as follows:

Directors' records, July 20, 1868. Voted, that John S. Eldridge, Henry N. Farwell, and J. W. Converse be, and are hereby, appointed a committee, with full power in behalf of the company to demand, have and receive all shares of capital stock in the hands of George M. Bartholomew, John Hooker, and other trustees, placed there to be had by certain creditors of the late Hartford, Providence & Fishkill Railroad Company, in compliance with certain terms within a certain time, and to make settlement with said trustees, in the name and behalf of this company in all matters of said trust; and if, in said settlement, it shall be thought advisable, a bond shall be given to said trustees, or other person, on their request, to indemnify and save said trustees from any lawful claim for giving up said stock, or in the matters of said trust. This corporation, for valuable consideration, which will be received in giving such bond, have stipulated to save such giver of such bond harmless from all liability or payments under the same; and the treasurer shall pay all sums paid out by our committee in discharge of their duties under this vote, in taking transfer of said shares from said trustees. Said committee shall have the same transferred to them as trustees, to hold the same subject to the order of this company. And said committee is also authorized and empowered to make full demand of the trustees on the late Hartford, Providence & Fishkill Railroad Company, for the whole property in their hands, and to make full settlement of said trust, as far as any sums are due under the same, and effect a full settlement of all matters between this company and the trustees, under any mortgage on said railroad.

[N. B. The portions of the printed pamphlet put in yesterday, were pages 33 to 49, inclusive. *Rep.*]

Testimony of Charles P. Clark. (*Sworn.*)

By Mr. BROOKS: I offer in evidence the certificate of the Boston, Hartford & Erie R. R. Co., dated November 9, 1868, of 7,349 shares of stock to John S. Eldridge, Henry N. Farwell, and J. W. Converse, and upon the back of the certificate an assignment of J. S. Eldridge, H. N. Farwell, and James W. Converse, trustees (to Henry N. Farwell, tre.) of the 7,349 shares. The date of transfer is the 10th of December, 1868; the transfer of Eldridge, Farwell, and Converse, trustees, to Henry N. Farwell. Attached to Mr. Farwell's name is "Tre.," (it looks more like "Fre.") That paper is marked Exhibit R.

Q. Now name the next transfer in the files.

A. Certificate 3187, for the same number of shares.

By Mr. THURSTON: We do not question that "Tre." is intended for "Trustee."

131 By the WITNESS: Here is the next one. You can examine it, Mr. Holmes (handing it to Mr. H.,) No. 3187, 7,349 shares, in the name of Henry N. Farwell, trustee; transferred on the reverse from Farwell, trustee, dated 29th of April, 1870; to George W. Long & Co., 4,156, and Henry N. Farwell, trustee, 3,193 shares; in all 7,349 shares.

The next transfer is from Henry N. Farwell power of attorney, to transfer to G. W. Long & Co., 1,000 shares, 11th of May, 1870.

The next transfer is on the 15th of June, 1870, transfer to Geo. W. Long & Co., 800 shares, power assigned by Henry N. Farwell. The next is by Henry N. Farwell, trustee, on the 24th of June, 1870; transfer to G. W. Long & Co. 1,393 shares.

Q. What is the 800?

A. The 15th of June, 1870.

Q. Find the appointment of president and of assistant treasurer. You may produce the stock-ledger to verify this last.

By Mr. WIGGINS: You can just leave it here with Mr. Farwell, so that it may not take up any time, and go on with your testimony. We will consider the book in, to be referred to if necessary.

By the WITNESS: It is on page 90 of the stock-ledger, showing these same transfers.

Cross-examination by Mr. Holmes:

Q. Will you please read that vote which I now show, giving the date?

By the WITNESS: (Reads) "From the records of the directors of the old Boston, Hartford & Erie Railroad Company."

Q. What do you mean by that? Tell what the book is.

By the WITNESS: On the 14th of November, 1863, "Voted, that the president be authorized to agree to allow interest to commence to accrue, at such time as he may deem expedient, of $35.000 of overdue coupons of bonds of the Hartford, Providence & Fishkill Railroad, held by the city of Hartford."

Q. When do you say that that is?

A. November 14, 1863.

Q. Now turn to January 6, 1864.

A. (From the same series of records, January 6, 1864, reads) "Voted, that the president of this company may, at his discretion, contract with any person holding overdue coupons of bonds issued by the Hartford, Providence & Fishkill Railroad Company, in consideration of forbearance to collect the same, that interest may commence on said sum due

on such coupons from and after January 1, 1864, and continue for such term of time, and payable at such time, as such president may contract."

By Mr. WIGGINS: Who was president of the corporation at that time?

A. I shall have to look back a little to see. (Reads:) "Samuel
132 B. Denison, president pro tem." Geo. M. Bartholomew is referred to as president on November 14, 1863. "Present, the president, Geo. M. Bartholomew."

Q. Who was president January 6, 1864?

A. The record reads, "The president, Geo. M. Bartholomew, in the chair."

By Mr. WIGGINS: Did you make the demand upon Mr. Farwell to return or deliver up these coupons?

A. I did, sir.

Q. When did you make it?

A. Without reference to the minutes, I am unable to say.

Q. Have you any way of ascertaining?

A. I will do so.

Q. Can you approximate to it at the time?

A. It is so easy to verify the date, that I prefer not to guess at it.

Q. Was it not the same day that this bill was brought in?

A. I am unable to answer that, sir.

Q. Were not the petition and bill all prepared at the time you made the demand?

A. I do not know whether it was or not.

Q. Who directed you to make the demand?

A. The receivers.

Q. Which of them?

A. I do not remember who; they were all present.

Q. Do they keep a record?

A. They do; it is in my safe.

Q. Will you produce them here?

A. I will, sir.

Q. You cannot tell the date of the demand?

A. It is very easy to verify it; I cannot now even remember the month.

Q. You were clerk of the receivers?

A. Yes, sir.

Q. The receivers had been in office for a year before this demand, had they not?

A. I think not.

Q. How long?

A. That would depend upon when the demand was made, which I cannot remember. I cannot remember within six months of the time when it was made. Receivers were appointed August 2, 1870.

Q. The demand was made in April, was it not?

A. I have answered distinctly that I could not tell within three months.

Q. Just ascertain when it was.

133 A. I will do so.

Q. Were not the receivers notified by Mr. Farwell in September, 1870, that they had this Sprague account and these coupons as collateral for that account, in 30 days after they were appointed to act as receivers?

A. It was in the fall of 1870, but in what month I cannot state without reference to the papers. A statement was received from Mr. Far-

well of his claim against the corporation, and annexed to that account there was a statement in regard to these Hartford, Providence & Fishkill coupons, and the claim against the Sprague.

Q. One of the receivers was Mr. Bartholomew?

A. He was, sir.

Q. The receivers had that notice very soon after their appointment, had they not?

(No answer.)

Q. Do you know anything about notice being served upon Mr. Bartholomew to pay these coupons and to settle that account?

A. No, sir; I do not.

Q. Have you heard Mr. Bartholomew say anything about notice being served on him by Mr. Farwell to pay this Sprague account and to settle that account?

A. No, sir; I do not.

Q. Have you heard Mr. Bartholomew say anything about notice being served on him by Mr. Farwell to pay this Sprague account?

A. No, sir; I do not recollect any.

Q. You never knew that any notice had been served?

A. No, sir.

Q. You are one of the trustees of this company—the Boston, Hartford & Erie?

A. Yes, sir.

Q. Are the trustees prosecuting this suit through the receivers?

A. The receivers are prosecuting the suit.

Q. Have the trustees anything to do with it?

A. If this property belongs to the trust, the trustees have an interest in having it recovered.

Q. Are the trustees prosecuting the suit?

A. No, sir; the receivers are.

Q. Are they doing it with the advice, authority, or direction of the trustees?

A. They are not doing it with the authority of the trustees, and my previous answer shows the relation as accurately as I can state them.

By Mr. WIGGINS: If you will get those records and that date, we will not trouble you any further at present.

By Mr. HOLMES: Do you know anything about these various
134 transfers of stock, which you say amount to 7,349 shares, to Mr. Farwell as trustee, except that you find the entry upon the stock-book?

A. I do not know to what that question refers. I knew nothing about it at the time, and I know nothing except by having found these papers and these records in the book; I can verify one debt here already.

The statement by Mr. Farwell that he had judgments against the Hartford, Providence & Fishkill Railroad, and claims and coupons, were included in the account which I see was filed, Oct. 19, 1870, by the memorandum.

Redirect:

Q. (By Mr. Thurston.) Was it Mr. Farwell or Farwell & Co.?

A. It is headed Farwell & Co., but it refers to Henry N. Farwell, I think.

By Mr. BROOKS: In answer to the question whether Henry N. Farwell made such a claim, is it H. N. Farwell or some one else, and who else?

A. The statement is headed, "Statement of A. G. Farwell & Co. vs.

Boston, Hartford & Erie Railroad Company," and the note at the close is—

"1868.

May 27.	We paid cash to A. & W. Sprague for their claim against the Hartford, Providence & Fishkill Railroad Company, with their authority to collect same			$161,818 06
" 29.	We paid cash for Francis M. Andrews' judgment of March 9, 1867, vs. Hartford, Providence & Fishkill Railroad Company, with authority to collect	$370 54		
	We paid cash for O. G. Waterman and Daniel Tillinghast's judgment March 9, 1867, vs. Hartford, Providence & Fishkill Railroad Company, with authority to collect same	8,798 48		
			9,169 02	
				$170,987 08

Against this amount received as collateral:

2,123 coupons Hartford, Providence & Fishkill Railroad,
500 " City of Providence, and
7,349 shares Boston, Hartford & Erie Railroad stock."

By Mr. BROOKS: We do not put that paper in, nor do we admit it to be evidence. It was a sort of notice.

(Witness furnishes A. G. Farwell & Company's statement of claims, Exhibit 1.)

135 *Testimony of James S. Whitney.*

Sworn. Examined by Mr. Brooks:

Q. What was your connection with the Boston, Hartford & Erie Railroad in 1867, '68, and '69?

A. I was elected a director in 1867, '68 and '69, and served as a director, to a certain extent, of the Boston, Hartford & Erie Railroad.

Q. I see that you are entered there as a member of the finance committee.

A. No, sir; I was not on the finance committee.

Q. Were you on the executive committee?

A. No, sir, not in 1867 or '68, to my knowledge. It seems by the record that I was added after the annual meeting.

Q. Will you please examine those papers now shown you?

A. I have looked them over hastily since I came into the court-room.

By Mr. BROOKS: I will show them to the other side, for I propose to put them in.

By Mr. WIGGINS: If these are the same which are printed, why, we have no objection to their being put in. But they are loose papers; nobody can tell anything about whether they are consecutive papers or not.

By Mr. BROOKS: They were pinned together. The custodian was here a moment ago.

By Mr. WIGGINS: Are they the same papers, and no more or less?

By Mr. BROOKS: The papers that you have got there are printed on

well of his claim against the corporation, and annexed to that account there was a statement in regard to these Hartford, Providence & Fishkill coupons, and the claim against the Spragues.

Q. One of the receivers was Mr. Bartholomew?

A. He was, sir.

Q. The receivers had that notice very soon after their appointment, had they not?

(No answer.)

Q. Do you know anything about notice being served upon Mr. Bartholomew to pay these coupons and to settle that account?

A. No, sir; I do not.

Q. Have you heard Mr. Bartholomew say anything about notice being served on him by Mr. Farwell to pay this Sprague account and to settle that account?

A. No, sir; I do not.

Q. Have you heard Mr. Bartholomew say anything about notice being served on him by Mr. Farwell to pay this Sprague account?

A. No, sir; I do not recollect any.

Q. You never knew that any notice had been served?

A. No, sir.

Q. You are one of the trustees of this company—the Boston, Hartford & Erie?

A. Yes, sir.

Q. Are the trustees prosecuting this suit through the receivers?

A. The receivers are prosecuting the suit.

Q. Have the trustees anything to do with it?

A. If this property belongs to the trust, the trustees have an interest in having it recovered.

Q. Are the trustees prosecuting the suit?

A. No, sir; the receivers are.

Q. Are they doing it with the advice, authority, or direction of the trustees?

A. They are not doing it with the authority of the trustees, and my previous answer shows the relation as accurately as I can state them.

By Mr. WIGGINS: If you will get those records and that date, we will not trouble you any further at present.

By Mr. HOLMES: Do you know anything about these various
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The statement by Mr. Farwell that he had judgments against the Hartford, Providence & Fishkill Railroad, and claims and coupons, were included in the account which I see was filed, Oct. 19, 1870, by the memorandum.

Redirect:

Q. (By Mr. Thurston.) Was it Mr. Farwell or Farwell & Co.?

A. It is headed Farwell & Co., but it refers to Henry N. Farwell, I think.

By Mr. BROOKS: In answer to the question whether Henry N. Farwell made such a claim, is it H. N. Farwell or some one else, and who else?

A. The statement is headed, "Statement of A. G. Farwell & Co. vs.

Boston, Hartford & Erie Railroad Company," and the note at the close is—

"1868.

May 27.	We paid cash to A. & W. Sprague for their claim against the Hartford, Providence & Fishkill Railroad Company, with their authority to collect same		$161,818 06
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(Witness furnishes A. G. Farwell & Company's statement of claims, Exhibit 1.)

135 *Testimony of James S. Whitney.*

Sworn. Examined by Mr. Brooks:

Q. What was your connection with the Boston, Hartford & Erie Railroad in 1867, '68, and '69?

A. I was elected a director in 1867, '68 and '69, and served as a director, to a certain extent, of the Boston, Hartford & Erie Railroad.

Q. I see that you are entered there as a member of the finance committee.

A. No, sir; I was not on the finance committee.

Q. Were you on the executive committee?

A. No, sir, not in 1867 or '68, to my knowledge. It seems by the record that I was added after the annual meeting.

Q. Will you please examine those papers now shown you?

A. I have looked them over hastily since I came into the court-room.

By Mr. BROOKS: I will show them to the other side, for I propose to put them in.

By Mr. WIGGINS: If these are the same which are printed, why, we have no objection to their being put in. But they are loose papers; nobody can tell anything about whether they are consecutive papers or not.

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Q. One of the receivers was Mr. Bartholomew?

A. He was, sir.

Q. The receivers had that notice very soon after their appointment, had they not?

(No answer.)

Q. Do you know anything about notice being served upon Mr. Bartholomew to pay these coupons and to settle that account?

A. No, sir; I do not.

Q. Have you heard Mr. Bartholomew say anything about notice being served on him by Mr. Farwell to pay this Sprague account and to settle that account?

A. No, sir; I do not.

Q. Have you heard Mr. Bartholomew say anything about notice being served on him by Mr. Farwell to pay this Sprague account?

A. No, sir; I do not recollect any.

Q. You never knew that any notice had been served?

A. No, sir.

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A. Yes, sir.

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A. It is headed Farwell & Co., but it refers to Henry N. Farwell, I think.

By Mr. BROOKS: In answer to the question whether Henry N. Farwell made such a claim, is it H. N. Farwell or some one else, and who else?

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Sworn. Examined by Mr. Brooks:

Q. What was your connection with the Boston, Hartford & Erie Railroad in 1867, '68, and '69?

A. I was elected a director in 1867, '68 and '69, and served as a director, to a certain extent, of the Boston, Hartford & Erie Railroad.

Q. I see that you are entered there as a member of the finance committee.

A. No, sir; I was not on the finance committee.

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A. No, sir, not in 1867 or '68, to my knowledge. It seems by the record that I was added after the annual meeting.

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By Mr. WIGGINS: If these are the same which are printed, why, we have no objection to their being put in. But they are loose papers; nobody can tell anything about whether they are consecutive papers or not.

By Mr. BROOKS: They were pinned together. The custodian was here a moment ago.

By Mr. WIGGINS: Are they the same papers, and no more or less?

By Mr. BROOKS: The papers that you have got there are printed on

pages 47, 48 and 49 of the pamphlet entitled "Papers relating to the State loan."

The next paper that I offer for your consideration and inspection is the paper printed on page 45 of the same pamphlet, an application by Alexander H. Bullock, governor, to the directors of the Boston, Hartford and Erie Railroad Company.

I propose now to put in the paper, which is an original paper, signed by Hon. A. H. Bullock, the governor. It commences as follows [reads]: "Boston, September 24, 1868. To the directors of the Boston, Hartford and Erie Railroad Company. Gentlemen: I invite your attention to a few questions which have not been answered to my entire satisfaction," &c., &c.

The reply commences as follows: "Boston, September 16, 1868. To his Excellency A. H. Bullock: Your favor of the 24th was duly received, and in reply we have the honor to submit the following replies," &c., &c. Signed by Messrs. Eldridge, Farwell, Whitney and Converse, (and also reads the rest of the document.)

By Mr. WIGGINS: We agree that either party may read any paper in that book where the original would be competent. (Assented by petitioners.)

By Mr. BROOKS: I will ask you if you signed that paper now shown you? (Printed on pages 47, 48 and 49 of the Papers relating to the State loan.)

A. Yes, sir.

136 Q. State under what circumstances.

A. This is a paper that I signed after it was signed by Mr. Eldridge and Mr. Parker, in reference to the amount of the indebtedness of the Hartford and Erie that could bear upon the construction account. A document made to submit to the State authorities, with a view to reach State aid. That document, as I have looked at it, was prepared by the attorney, who was the best accountant of the road, so far as I knew anything about it. It was signed by the president and vice-president, who were two of the executive committee of three in 1867. It was certified to be the truth, and I signed it. That is my signature, and I believed it to be the truth when I signed it. That sets forth that the Sprague debt has been paid in the interest of the Hartford and Erie Railroad. That I believed, and I believe it now, that it was taken up for the road and with the money of the road. The reason why I believed that was, that I know that A. G. Farwell & Company at that time had the money of the road, to the amount of nearly $2,000,000.

By Mr. HOLMES: We object to this ——

By the MASTER: I should think that was competent. The question of his having the money of the road would be a very pertinent point in the case.

By the WITNESS: As to my knowledge of his having the money of the road, I was one of the directors of the Boston, Hartford & Erie Railroad that went with the president of the road and helped him settle his difficulties with the New York & Erie Railroad. I was present when he sold $5,000,000 of Berdell bonds to the old Erie Railroad. He brought home, as I understood, about $2,000,000, and 1,500,000 of acceptances. Those acceptances were said to have been deposited in the first place in the banks, and afterwards loaned, upon memorandum checks or otherwise, to A. G. Farwell & Co. and other parties.

By the MASTER: Is that within your knowledge, how these acceptances were treated?

A. Yes, sir; because it came before the board by the State commis-

sioners doubting whether the loan was good in the hands of A. G. Farwell & Co.; and I discussed the question with one of the State commissioners myself; in which discussion I took the ground that they were good, and I believed they were eminently good.

By the MASTER: Was Mr. Farwell present at these discussions?

A. Yes, sir; I think he was. Mr. Farwell was the man who negotiated for the Boston, Hartford & Erie Railroad, with Mr. Graves' assistance, with the State commissioners.

Q. You ought to state either what passed in the presence of Mr. Farwell, or what you know to be facts absolutely of your own knowledge.

A. I know this to be the fact: I did not see the money counted, but I knew that it was loaned to A. G. Farwell & Co. I understood that Mr. Oakes Ames had a certain portion of it, but to save the interest A. G. Farwell & Company took a large portion of that money, and were to allow the road some interest on it. I refer to the money of the Boston, Hartford & Erie Railroad, obtained by the sale of the bonds of the Boston, Hartford & Erie Railroad.

137 Q. Do you refer to the actual $2,000,000 of money, or to the acceptances?

A. I refer to the money.

Q. How much of the money did Mr. Farwell have, to your knowledge?

A. Something over a million of dollars, I should think, as I understood it. In relation to these coupons, my knowledge is only general. It is not particular in reference to them. It was from the general declaration of the attorney of the road and the executive committee that there was such a debt—that the State commissioners regarded it as a debt.

Q. (By Mr. Wiggins.) Do you speak of the coupons now?

A. I speak of the Sprague debt. I don't know that I could distinguish between the coupons or the other debt. There was a floating debt of the old Hartford and Erie Railroad, which was considered as a liability of the Boston, Hartford and Erie Railroad. My information was so general that I could not tell the amount of either of them, and I don't know that I could tell the amount of the debt, except that there was such a debt talked of by the board; and one of the requirements of the State commissioners would be that that debt should be removed, and I understood that it had been removed, and signed this certificate after Mr. Farwell and Eldridge, saying that it had been taken up in the interest of the road, which I understood to be taken up for the road and with the money of the road.

Q. Do you recollect hearing Mr. Farwell say how that debt was paid?

A. I don't know that I do directly.

Q. You don't think he gave any explanation how it was done?

A. No, sir; not in detail, except the general fact that it was done and taken up. I don't think that I heard Mr. Farwell go into any particulars about it.

Q. Did he say anything about any assignment of it himself, or that he held the coupons that the Spragues had?

A. No, sir; I don't recollect of ever hearing him say anything about it.

Cross-examination by Mr. Wiggins:

Q. You signed this paper of the 26th of September in reply to a communication addressed by the governor, without any personal knowledge whether what you had signed was true or false?

A. No, sir; I had——(interrupted.)

Q. Wait one moment; I am speaking of personal knowledge from your examination and ascertainment of the facts.

A. That depends upon what construction you put upon the word "personal." I had this knowledge: I had the statement of the attorney, prepared, as he says, from the books. I had the certificate of the president and vice-president prior to my signature that that statement of these was true, and that was my personal knowledge. My confidence in the three men was sufficient to command my certificate upon their statement.

138 Q. You had no personal knowledge, from any investigation or examination yourself, as to whether the facts that you represent here are true or false, but you signed wholly upon the information which you derived from Mr. Graves, Mr. Eldridge, and Mr. Farwell?

A. Yes, sir. That was principally the information I had.

Q. Did you have any other knowledge?

A. I never saw Mr. Sprague.

Q. Is there one word in your report about the Sprague debt?

A. Yes, sir.

Q. Where is it? I may have overlooked it. Be kind enough to see.

A. Here is the document which I submitted, which referred to the Sprague debt.

Q. See if there is one word mentioned in what you signed there about the Sprague debt.

A. The written document to which my signature is appended refers to the Sprague debt. (Consults the written document. Reads from Graves' affidavit.)

"Sprague debt, claims of A. & W. Sprague, Waterman, Tillinghast & Co., Francis A. Andrews, are all taken up and paid in the interest of the company . . . "

That is the document I appended my name to, (referring this answer to Governor Bullock.)

By Mr. WIGGINS: I say we have not seen any such paper.

By Mr. BROOKS: We put it in yesterday and read it. It was upon Mr. Washburn's examination. He produced it, and a copy was furnished to Mr. Holmes yesterday afternoon.

By Mr. HOLMES: That is Mr. Graves' affidavit. We thought the gentleman was referring to his own.

By the WITNESS: I referred to a statement, and that statement refers to that claim.

Q. I now come back to my question. This is the document that Mr. Whitney signed. I ask him to state now whether there is a single syllable in this paper which he signed which has anything to say about the Sprague debt.

A. I understand that it has direct reference to the Sprague debt. That is alluded to in the document. What you have got printed to follow it I don't know.

(N. B.—The part referred to is on page 47 of the printed document.) (Witness takes the written document.)

By Mr. WIGGINS: Is this part of it what you refer to as covering the Sprague debt:

"In answer to question No. 1," the last paragraph is, "Between the time of the 1st and 2d report, sundry of them were taken up, and on the day of the statement of Mr. Graves the amount of the claims presented were believed to be only valid to less than $6,000."

Q. Did you understand that to refer to the Sprague debt?

A. Yes, sir. I predicated that certificate upon a statement made by Thos. E. Graves, and sworn to before Mr. Barry, the assistant treasurer.

Q. That you have not seen?

A. No, sir. I signed, saying that it was so and so. And here
139 is my evidence that I base it upon. You ask me what personal knowledge I have. I have here the affidavit before the assistant treasurer.

Q. Here is a paper which you have signed and which the counsel has put into the case, which you state that you signed because you believed it to be true at the time?

A. Certainly.

Q. You believe it to be true now, do you not?

A. Yes, sir.

Q. Is there anything in there which was not true at the time you stated or which is not true now?

A. I do not think there is; I think Mr. Graves meant to state the truth.

Q. I am talking about you; there is nothing in this document but what you believed to be true then, and have believed to be true ever since, and believe to be true now?

A. I do not know what you have got in that book there.

Q. It is what you signed.

A. I signed a certificate I wish to see what it was in writing. It begins thus: "Your favor of the 24th was duly received, and we have the honor to submit the following answers to your interrogatories," &c. These that follow were the answers submitted. This is what we signed. It is not an affidavit.

Q. That was true then, has been true ever since, and is true now?

A. I have no doubt of it.

Q. There is not a word mentioned in this about the Sprague debt?

A. I do not know. I never read it. You say that there is not, and I take it for granted that there is not. The date of it is Sept., 1866.

(By witness.) I now hold in my hand a statement of Mr. Graves, sworn to before Mr. H. Barry, justice of the peace. As to the Sprague debt, you asked me about my personal knowledge of this fact. I had knowledge of this certificate, and I answered from my knowledge of this certificate. My personal knowledge is of a certificate of the attorney under oath, and on the 26th he certified that that claim was paid, and I signed a document stating that it was.

Q. Have you ever signed a document stating that it was paid?

A. No other than this document in my hand, that I know of.

Q. Will you produce it?

A. You have it before you.

Q. I have no such paper as that.

By the MASTER: It will not be necessary to settle that question by the witness.

Q. Did you ever sign any paper in which it was stated that this Sprague debt was paid?

A. I can answer your question in a moment——(interrupted.)

Q. Did you ever sign any paper except this one, in reference to what you considered the Sprague debt?

140 A. I will tell you the truth about it, and you can use it in your case as you please. I signed such certicates as I was called in to sign, that were prepared by the attorney of the road, the president and vice-president, and declared to be truthful. I appended my signature, believing them to be truthful, upon their statements. I did not go and

examine the ledgers and books and coupons, and count them up and cast the interest.

Q. Did you ever sign any other paper which concerned the Sprague debt in any way, except this paper which has been put in?

A. I cannot say whether I have or not. I had forgotten that I had signed this paper, until I saw my signature to it. I recollect now that I did sign it.

Q. Do you know when the Sprague debt was purchased?

A. I cannot tell the precise time, but it was about the time that we were getting aid from the State.

Q. Is that your recollection?

A. Yes, sir.

Q. What time did you get aid from the State?

A. I think we began to receive State aid in 1868.

Q. What time in 1868?

A. I should think as late as August or September. I cannot be definite as to the time.

Q. Did the Hartford & Erie Railroad receive a dollar of State aid in 1868?

A. I should think that it did.

Q. Have you not any recollection on the subject?

A. No, sir; I have no definite recollection now.

Q. Now, when did the Hartford & Erie Railroad receive any of the money from the New York & Erie Railroad? You were in that muddle, were you not, over in Jersey City?

A. I was not in the muddle. There were other gentlemen in the muddle, and I was in the daylight, and I helped them out of the muddle by being so.

By the MASTER: He naturally receives that as a sort of fling. You ought not to have said it.

A. I assisted Mr. Eldridge in making his final settlement with the Erie Railroad.

Q. At what time did the New York & Erie Railroad pay any money over to the Hartford & Erie Railroad?

A. My impression is that it was in the fall of 1868; but it may have been a year later. I think it was that, however. I have not refreshed my memory by looking at any dates recently.

Q. In April or May, 1868, did the Boston, Hartford & Erie Railroad have any money on hand in their treasury?

A. I should think that they had, sir.

Q. Do you know how the fact is? I am not speaking of bonds or security for stock.

A. I know, as a general fact, that they had stock and bonds. They issued both, and those ought to have brought money. I don't know what else they got for them.

141 Q. You were one of the executive committee?

A. I was an officer of the road, but I was not on the executive committee in 1867.

Q. I am speaking of 1868?

A. I don't know that I was in 1868. I was never called upon to consult with them, but it seems that I was added to the executive committee by the records; so Mr. Graves says.

Q. Do you know as to the fact whether the Boston, Hartford & Erie Railroad had or had not any money in their treasury at that time, in May and June?

A. They had resources. Their capital consisted in their bonds and stock.

Q. I am talking about money in the treasury?

A. I don't know whether they had any money or not.

Q. Don't you know that they did not have money?

A. No, sir; I don't know that they did not have any money.

By Mr. WIGGINS: You don't know how the fact is at that time, in 1868?

(No answer.)

Q. You speak about your believing (that is the expression you use) that the Farwells took up the Sprague debt for the road and with the money of the road?

A. Yes, sir; that is my belief.

Q. Did the Farwells have any of the money of the road until after they received this money or a portion of this money from the Erie Railroad, to your knowledge?

A. No, sir; they had none, to my knowledge.

Q. Then the money that you speak of, when you say that you believe that the claim was taken up by the money of the road and for the road, was the money which had been paid over from the New York & Erie to the Boston, Hartford and Erie—this $2,000,000, and those checks and acceptances?

A. I suppose so at that time, that I was the auditor of the road.

Q. That the money that you speak of and which you say was, you believe, used in purchasing this claim, belonging to the road, was a portion of the money which had been paid over by the New York & Erie Railroad to the Boston, Hartford & Erie Railroad?

A. I suppose that to be a portion of the indebtedness. Mr. Farwell took a portion of the stock and bonds, but they took the Erie money. It went into the general account. I did not distinguish between the money received for bonds put out. It was the Erie money. I understood that he had money of the road in the hands of A. G. Farwell & Company.

Q. Now when you state in your direct examination, that you believed that the claim of the Spragues had been purchased by Mr. Farwell for the road, and with the money of the road, you had in your mind reference to the time and the fact that they had received a certain portion, or borrowed a certain portion, of this money which came from the Erie Railroad?

A. Not certainly. Mr. Farwell had a large portion of the resources in the shape of its bonds and stock before he got any money. I know it from the sworn testimony.

142 Q. Where do you find such sworn testimony?

A. I find it in his testimony to the State when he was a witness.

Q. Do you refer to his statement before the committee of the legislature?

A. Yes, sir.

Q. How do you gather from that fact the knowledge which you say you possessed in 1868?

A. I possessed in 1868 a general knowledge of the fact that he was the financial officer of the road. He was the capitalist upon the board of directors, that looked after the financial business of the road.

Q. You mean by that, that he was the man in the board of directors who represented the capital?

A. The man who took care of the money affairs of the road.

Q. How do you know that A. G. Farwell & Company in 1868, in April, May, and June, or about that time, had a large amount of the securities of the road? How do you know that fact?

A. I know it from the general understanding that he was allowed to take those securities and hypothecate them for the benefit of the road to carry on the business of the road, and we supposed that whatever was done through him was properly done.

Q. I want to get at your knowledge. You have stated here that at the time I refer to, the Farwells had in their possession a large amount of securites of that road. How do you know that fact?

A. I know it from the general understanding of the board of directors, and from hearing the attorney of the road and the president of the road say so. I know it, as the director of a bank knows about the condition of the bank, from the president and the cashier. They don't count all the money in the bank.

Q. Do you mean to say that Henry N. Farwell, or any member of the firm of Farwell & Company, admitted to you or to anybody in your presence and hearing, or stated to you at that time, that they had in their hands and possession any amount of the securities of the Hartford & Erie Railroad in May, 1868?

A. Yes, sir; I mean to say that I heard Mr. Farwell say that he was carrying a large amount of the stock of the road. I have heard him say it repeatedly.

Q. When?

A. Well, fifty times. I can't fix the day of the month.

Q. When did he say that he was carrying the stock?

(No answer.)

Q. (By the master.) What day was it?

A. From the inception of the enterprise. When I went as a director it was understood that Mr. Farwell took the bonds of the road and the stock of the road and advanced money upon them.

143 Q. We want to get down to the naked truth. Did Mr. Farwell or any member of the firm of A. G. Farwell & Company tell you or admit to you in May, 1868, that he or they were carrying a large amount of the stock of that road?

A. Yes, sir. In 1868 he did. I don't know that it was in May.

Q. Before the purchase of the Sprague claim?

A. Yes, sir. I understood that Mr. Farwell was taking this stock, taking the bonds, advancing the money on it, and using the stock for the benefit of the road.

Q. There has been a good deal of this general understanding. We want to come at the truth. Now did Mr. Farwell up to May, 1868, or before the time of the purchase of the Sprague claim, admit to you or to anybody in your presence and hearing, or state that he was at the time carrying a large amount of the stock of the Boston, Hartford & Erie Railroad, in May, 1868?

A. It was before May, 1868. He always claimed to be carrying a large amount of the securities of the road and advancing his own money on it.

Q. We are speaking about the stock.

A. Well, the stock and bonds both.

Q. He always claimed that he was carrying a large amount of the stock?

A. Yes, sir.

Q. Now did A. G. Farwell & Company or Henry N. Farwell have the

charge and custody of these bonds, of this stock, and the books of the company?

A. No, sir; Mr. Barry was the assistant treasurer, and Mr. Farwell's partner, Mr. Hall, was the treasurer; but they were subordinate to Mr. Farwell. He is a man of positive will, and they both did just what he told them to do.

Q. It is not necessary to volunteer any statement.

A. You asked me for the truth—for the fact.

Q. I asked you if Mr. Farwell had the custody of the bonds and stock of that road.

A. Yes, sir. I think that the treasurer and assistant treasurer would have done exactly what Mr. Farwell told them to do.

Q. Then Mr. Farwell was the corporation, was he not?

A. Pretty much.

Q. You didn't know anything about it, did you?

A. Nothing else, except that I had confidence in Mr. Farwell and in Mr. Hall and in the direction.

Q. You had nothing to do with the management of the road, although you were director?

A. No, sir. There were 15 directors; when I was wanted I went and heard the vote proposed, and if it was a proper one I voted for it.

Q. Now do you know the position of the Boston, Hartford & Erie Railroad in the first six months of your connection with it?

144 A. I never examined the books personally. No, sir.

Q. You say you had some general knowledge about the unpaid coupons of the Fishkill Railroad in the hands of the Spragues in connection with their debt. You understood, didn't you, in reference to this Sprague debt, that they had in their possession, and in connection with their claim of debt against the Fishkill Railroad, certain unpaid coupons of the Fishkill Railroad?

A. Yes, sir; I understood there were unpaid coupons in Providence and a debt to the Spragues.

Q. In the hands of the Spragues?

A. I don't know whether they were Spragues' or not. They were some that held Fishkill coupons.

Q. Was not that a matter which was talked about among the directors and between the directors, and the corporation had knowledge of that fact of the claim of the Spragues in regard to these coupons?

A. The board of directors knew there was such a debt, but it was never talked in detail. There was very little detail matter ever presented to the board, except the general fact that there was such a debt.

Q. Did the directors know that the Spragues had these coupons and claimed to hold them in connection with this claim of theirs?

A. I had that knowledge as a member of the board, I think.

Q. How early did you have it? Was it as early as you heard of the Sprague debt?

A. Yes, sir.

Q. Do you know Mr. Ayre?

A. Yes, sir.

Q. You recommended him to whatever position or office he held, didn't you?

A. No, sir; I did not. Still I thought he was a very good man for his place. He was there before I went in there. He was a clerk for Eldridge formerly.

Q. Was he connected with the road before he went into the road?

A. I don't know that he was; he had been clerk for Mr. Eldridge. He went in with him.

Q. When did he first have any connection with the Hartford & Erie Railroad?

A. I should think it was the fall of 1866. It might have been 1867.

Q. How long did he continue there?

A. He was there as long as I was there as a director.

Q. What was his connection with the road?

A. Well, sir, to answer truthfully, I never could tell exactly. He seemed to be clerk for Mr. Eldridge and for the road. He kept a set of books for the Hartford & Erie Railroad. But his relations to the treasurer I never could find out, and I don't know to-day.

145 Re-direct:

Q. (By Mr. Brooks.) I wish to examine upon two documents which are in this State-loan paper—one a communication from Alexander H. Bullock to Geo. T. Bigelow, Emory Washburn, and Samuel Ashburner, commissioners. It is on page 33 of the report, under date of September 12; and the reply of the commissioners is on page 37. Now, in these documents I want to call your attention to two things. In this communication of the governor to you he says, "I inclose copies of communication made to me by the commissioners." Since they have been referred to in this examination, I wish to refer you to the communication of the commissioners to the governor, and to a statement in "question 3" or their answer to "question 3." It is on page 37—the question is.

"In respect to the item of $75,000 for certain other debts, &c., the commissioners have submitted the same to the inspection of Thos. E. Graves, the legal counsel and adviser of said company, and required him to state upon oath what parts of said claims are, in his judgment and belief, due and collectable against the company. He has done so, and his closing statement is in these words: "These include all claims presented to the honorable commissioners, and by them handed to me. My judgment and belief is that there is not over $6,000 of the whole claim can or ever will be collected out of the Boston, Hartford & Erie Railroad Company, or from any estate in its possession."

At the end of this paper which you had in your hand is exactly the same statement.

A. Yes, sir. (Reads Graves' affidavit, the same as for'going.)

Q. That is the same, is it not?

A. Yes, sir.

Q. Now, in the communication to you, the governor refers to certain communications made by the commissioners to him, and in your answer you speak of the statement of Mr. Graves, and say that the amount of claims presented and believed to be valid is less than $6,000. Now I want to know whether the communication referred to is that which you have just read from, and whether that statement referred to there is in the affidavit of Graves?

A. My belief is that this statement of Mr. Graves referred to in this answer was the foundation of my certificate; that I signed that letter based upon that information, believing it to be true, and that beyond that I had no direct information other than the certificate.

Now, my question is, whether that word "Statement of Graves," referred to there, is the statement of the affidavit?

A. I think it is.

Testimony of Chas. P. Clark, (recalled.)

Q. (By Mr. Brooks.) The record-book of the receivers was called for; have you got it?

146 A. Yes, sir. It appears that the list of claims was ordered on file on the 19th of October, 1870. The next reference to this matter that I find is on the 15th of March, 1871, entered in the book commencing as follows: "This board of receivers," &c.

By Mr. WIGGINS: We don't ask you to fix dates. We don't want you to put any on record.

Q. When did you call upon them for the coupons?

A. The 26th of April, 1871. The clerk of the directors was directed to demand certain coupons.

Q. Is that the time when you made the demand?

A. Yes, sir. The 3d of May the clerk reported that he had served the demand for the coupons upon H. N. Farwell.

Q. Did you serve it on the 26th of April or the 3d of May?

A. My imprersion is that it was the 26th of April, but I am unable to say at this moment.

By Mr. WIGGINS: Do the receivers object to our seeing all there is in this matter?

By Mr. THURSTON: Certainly not.

By the WITNESS: I was commencing to read the record when you stopped me.

Q. Does anything appear there showing that Mr. Farwell had demanded payment of Mr. Bartholomew?

A. No, sir; not that I know of.

Q. Have you examined it to see?

A. Yes, sir.

Q. Read from the directors' record of the new corporation.

A. (Reads.) "May 2d, 1865. Voted that George M. Bartholomew may purchase the coupons of the mortgage bonds of the Hartford, Providence & Fishkill Railroad Company, due or to become due, and hold the same with the same rights as if he owned the bonds from which they may be detached; and that this company will allow and pay him interest on the sum shown due on such coupons from the time they fall due."

That is on page 32 of the new company directors' record.

Testimony of James W. Converse.

Sworn. Examined by Mr. Brooks:

Q. Have you been connected with the Boston, Hartford & Erie Railroad in any official capacity; if so, what, and when did you become connected with it?

A. I think I was made a director in July, 1867.

Q. Did you hold any other office than that of director?

A. No, sir.

147 Q. Please examine the paper exhibited to you and addressed to his excellency A. H. Bullock, dated September 26, 1868. Did you sign that paper?

A. That is my signature.

Q. State the circumstances under which you signed it, who was present, and what was stated to you, if any thing, by Mr. Farwell.

A. Mr. Eldridge and Mr. Farwell and Mr. Graves were present. I don't remember whether Mr. Whitney was present. I was called upon.

I am not sure whether I was sent for; but when I was in the office it was stated to me that the governor had required some answers to be made by the directors. The answers had been made up and I was to be called upon to sign it with the others. I went into the matter and asked questions in regard to them, and was satisfied that the questions answered were answered correctly, and then I signed my name.

By Mr. WIGGINS: Is that the same paper that Gen. Whitney was examined about?

By Mr. BROOKS: Yes, sir.

Q. Was anything said about the claim of A. & W. Sprague, of Providence?

A. I think I went over the different questions, and the question came up whether I could consistently sign that?

Q. (By the master.) Was Mr. Farwell present at the time this question came up?

A. Yes, sir.

Q. And he heard what was stated?

A. Mr. Farwell and Mr. Eldridge and Mr. Graves explained the matter to me, and the fact that he had given his affidavit, i. e., that Mr. Graves had, was one of the reasons that gave me confidence in signing it. I recollect that thing was stated, that he signing it gave me a reason, independent of all that was said, to satisfy me that it was correct and proper for me to sign it. I recollect very well that one matter which had been settled was referred to as the fact that I settled it myself. It was, however, the only thing, I think, that I was called upon to settle, and that was Mr. Everett's claim.

Q. Was that in connection with Mr. Graves' affidavit?

A. I know that was spoken of as a thing that I knew myself.

Q. Is that mentioned in Mr. Graves' affidavit, the one which you refer to?

A. Yes, sir.

Q. It follows a statement in regard to the Spragues?

A. Yes, sir.

Q. Was anything said by Mr. Farwell about his having taken an assignment of it, or about his holding the coupons, or any coupons that were in the hands of the Spragues?

A. No, sir. I did not hear anything in regard to the matter. I don't think anything was said in regard to it.

148 Q. I will now call your attention to another matter. Please examine this paper marked R, certificate of the Boston, Hartford & Erie Railroad Company, of 7,349 shares of stock of that corporation in the hands of Eldridge, Farwell, and Converse, trustees. The indorsement on the back of it, under date of December 10, 1868, purporting to be signed by Jno. S. Eldridge, Henry N. Farwell, and J. W. Converse, trustees, transferring the stock to Henry N. Farwell—do you remember signing that trustee paper?

A. Yes, sir.

Q. Where was it signed, and who was present?

A. It was in the office of the Hartford & Erie Railroad Company.

Q. Who was present?

A. Mr. Eldridge and Mr. Farwell.

Q. How came you to sign it?

A. Mr. Eldridge said to me that they had concluded that Mr. Farwell was going to take the stock that was left in our hands as trustees, in payment for or settlement of, I am not sure which, (it might have been

both,) of what he had done and what he paid the Sprague claim at Providence.

Q. Did you make answer to that?

A. Well, I had the impression that the thing was settled, and I have the impression also that I demurred in regard to it, and finally signed it. It has gone out of my mind. Of course I cannot tell all the particulars which occurred.

Q. You said it had been settled. By whom and by what funds?

By Mr. WIGGINS: He can state what was said and what he knows. The counsel is not to suppose or guess here.

A. I supposed that the whole thing was settled, as was stated in what had been done before.

Q. What was the date of the assignment of those shares?

A. December 10, 1868.

Q. Did you know of any funds being in the hands of Mr. Farwell in the year 1868 before this December 10, and about what time?

By Mr. WIGGINS: We submit that the question must be confined to about the time of the purchase of this claim.

By the MASTER: Of course, unless he shows that he had funds at that time, it will not avail. But of course they may go before and after.

By Mr. WIGGINS: They may go upon presumption. If he had money before or money after, they are not confined to that very moment in their evidence, but it must centre in that.

By the MASTER: You understand that, Mr. Wiggins, yourself, that we do not want to go into the state of the accounts or the credits or debts between this firm afterwards. The court has expressly said that that was a matter that was not to be gone into.

I think they may state both before and after with a view to raise
149 the presumption of what he had at the time. I suppose he had a large sum in December, or the 27th of May, 1868, and it did not appear how long he had had it. If it appeared that he got it after he took the Sprague debt, then it would be a question whether there had been any arrangement by which the Sprague debt had been extinguished after he took it. I don't see that you can't show it. You can't try this case as you do a justice's court case. We suppose the master is entirely competent to distinguish between what is competent and what is not. You will have to go along as you have done.

Q. I will make it short. I will ask whether you knew of any funds being in Mr. Farwell's hands prior to December; state the time as well as you can.

A. I don't think I could give the dates, but it was some time in the summer that Mr. Farwell showed me two checks of $500,000 each that he had received. It was in his own counting-room on Central Wharf; and, as I understood it, he received them that morning.

Q. From what source?

A. It was from the New York & Erie Railroad.

Q. Tell about anything more.

A. At another time he met me on Devonshire street as he was going from the office, as I understood him, to the bank.

Q. Was this after December?

A. No, sir; it was not a great while after the first. I can't tell you how long, but I don't think it was a great while.

Q. But it was about that time?

A. He showed me a check of $1,000,000 that he received, and stated that he was going to the bank to deposit it.

Q. Do you know about his receiving the proceeds of any acceptances of the Erie Railroad?

A. No, sir.

Q. Do you know anything about his having Berdell mortgage-bonds and stocks of the corporation?

By Mr. WIGGINS: We think there should be some limitation to this.

By the MASTER: There is evidence tending to show that he stated at the time of this investigation before the commissioners that these debts did not exist; that they were extinguished. Governor Washburn stated so. Now, all these funds that he had at this time will be a ground of inference that he made such an arrangement. All we can do is to go over it as fast as we can and see what it amounts to.

Q. Now, confine yourself to 1868, and prior to December 10, and state whether you know of Mr. Farwell having Berdell bonds or stocks, and of his selling them.

A. I did not interfere with Mr. Farwell's matters.

By the MASTER: Do any of you know the exact date of issue of the Berdell bonds?

By Mr. BROOKS: No, sir; that does not appear. It don't appear what specific sums were issued at certain times.

150 Q. Now, from this statement or statements in his presence, do you know as to his having received and disposed of the Berdell bonds? Confine yourself to 1868.

A. I could not say anything in relation to that, except that Mr. Farwell had the management, as I understood it, of the financial part of the road. How many shares or bonds of other kinds he had I have no knowledge.

Q. I will ask you one more question, and that is all I will ask you; and that is, whether at the time, or at any of those times—whether, when you signed that paper going to the governor, or when you transferred that, the stock, to Mr. Farwell—he set up that he had an assignment of the Sprague claim, or that he held the coupons which the Spragues had held?

A. I have no recollection of anything of the kind.

Cross-examination by Mr. Wiggins:

Q. These checks that he showed you, were they the checks of the Boston, Hartford & Erie Railroad?

A. I think not.

Q. They were checks that had come from the New York & Erie Railroad as part of their money, and were to be paid over to the Hartford & Erie Railroad?

A. Yes, sir; they came from the New York & Erie Railroad as part of the sale or proceeds of the bonds.

Q. It was part of the Erie Railroad money sent to the Hartford & Erie Railroad?

A. Yes, sir.

Q. Did you see these checks?

A. Yes, sir.

Q. Who were they payable to?

A. I don't remember who they were payable to. I have the impression that they were to Mr. Farwell, and were sent on to him.

Q. You think they were payable to Mr. Farwell; don't you know the fact that those checks and that money was deposited in the bank to the credit of the Hartford & Erie Railroad at that time?

A. No, sir; I do not.

Q. Have you any knowledge on the subject?

A. No, sir; I only saw them that morning. They were merely shown to me by Mr. Farwell.

Q. It was a part of the money that came from the Erie Railroad in payment of this $5,000,000 of bonds?

A. He stated that. I could not say anything more; and that is the reason why I spoke of it.

Q. If they were his own private funds what would that have to do with the business of the Hartford & Erie Railroad; Mr. Farwell was a man of large wealth, was he not?

151 A. We presumed him to be.

Q. Did you not understand that those checks represented money which the Erie Railroad in New York had sent to the Hartford & Erie Railroad here?

A. Yes, sir.

Q. It was not Mr. Farwell's money?

A. No, sir.

Q. Then on the 10th of December you transferred this stock to Mr. Farwell as trustee by direction of Eldridge, the president of the road, to pay him or re-imburse him for what he had paid for the Sprague debt and other Providence claims. That is what you say, is it?

A. That is it.

Q. And that Eldridge so informed you and so directed you to do?

A. Yes, sir.

Q. What was the price of the Hartford & Erie stock at that time?

A. I don't think I could tell by any memory. I know that it was up pretty high.

Q. What is your best recollection as to the market-price at that time?

A. I suppose I could inform myself by looking back. I have taken no means as to that. I know it was ruling quite high at that time.

Q. Was it not as high as $25, or in that neighborhood?

A. I have the impression that it was over $20 considerable, and perhaps considerable more.

Q. Now, if you thought or believed that the Sprague debt had been settled and paid, why did you transfer or agree to consent to the transfer of this stock for the purpose of paying him or re-imbursing him?

A. That would appear perhaps a little strange at first. But I supposed with all that Mr. Farwell had, having control of the matter, that that matter would have been certainly adjusted with himself, if he had paid it with his own money. Hence I demurred until it was urged that it was not so, and that this stock was going to pay it.

Q. In other words, he satisfied you at that time that you had been mistaken; that he had not been paid or re-imbursed for what he advanced to pay this claim. That is what you mean to say, is it?

A. I supposed that I was mistaken.

Q. Then you say that you supposed that he had been paid, from the fact that he had in his own hands a large amount of moneys, and that he would naturally settle with and pay himself. That is what you mean?

A. Yes, sir.

Q. That is all you mean about that?

A. I mean if he had not paid out of the funds of the railroad, and if he had paid it himself, I supposed there were funds enough by which it might have been paid without this stock.

152 Q. You supposed that he had paid it out of the money that was in his hands?

A. I supposed in the first place when I signed this, that it was set-

tled and paid at the time of the transfer of this stock, and when I signed that paper that the whole thing was settled, and that that was the end of it.

Q. Why was this transfer to Mr. Farwell as trustee?

A. I can't tell you why it was.

Q. What reason was given at that time, if any?

A. I have no recollection as to the reason.

Q. Was anything said about the manner in which it was to be transferred, and was transferred?

A. I have no recollection of it.

Q. Now was the stock which was in the hands and possession of Mr. Bartholomew and others as trustees, this 9,000 and odd shares, was that reckoned in the report to the State authorities as part of the assets of the company?

A. I could not tell you in regard to the time.

Q. Have you any means of ascertaining?

A. I have not examined.

Q. Do you know the fact that the commissioners had the charge of that money received from the New York & Erie Railroad, and would not allow any of it to be spent for any purpose except in the construction of the road?

A. I never had any conversation with the commissioners at any time that I recollect, upon any point in regard to the road. I never was present.

Q. Didn't you understand it to be true that the commissioners would not allow any part of that money derived from the sale of bonds to be expended in any way other than in the actual construction of the road?

A. Mr. Farwell told me that that was so, but I never heard anything from them in any quarter whatever. I never had any conversation with the commissioners in regard to any of these bonds.

Q. You are one of the directors?

A. I was at that time.

Q. Was not that matter discussed in the board of directors, the action of the commissioners in regard to that matter?

A. I don't remember.

Q. Didn't you understand it from other parties besides Mr. Farwell?

A. No, sir; I never heard it from any other quarter, to my recollection.

Q. Didn't you sign a bond for $2,000,000 to the State?

A. I signed with others. Yes, sir.

Q. Was not that bond given for the very purpose of protecting
153 that money which was received from the Erie Railroad, that it should be appropriated and used only for the purpose of the construction of the road?

A. I understood it to be so, sir.

Testimony of Charles P. Clark, (recalled.)

By the WITNESS: If the court please, I would like to fix definitely a date. The question was asked me on what day I made the demand for the coupons. It was on the 21st day of May, 1871.

Q. (By Mr. Wiggins.) Was it the same day that this bill was filed?

A. I don't know about the filing of the bill, sir.

DOCUMENTARY EVIDENCE.

By Mr. BROOKS: I should like to put in some documentary evidence: The mortgages of the Hartford, Providence & Fishkill Railroad Com-

pany, and also the contract between the city of Providence and the Boston, Hartford & Erie Railroad, and also the act of Rhode Island and ordinance of the city.

Mr. Parkhurst reads act of general assembly of the State of Rhode Island, passed at the January session, 1851, entitled "An act authorizing the city of Providence to loan its credit in aid of the Providence & Plainfield Railroad and for its extension." Marked Exhibit S.

By Mr. WIGGINS: Are those originals?

By Mr. PARKHURST: Those are certified copies from the secretary of state of Rhode Island.

Mr. Parkhurst reads an ordinance of the city of Providence, passed February 3, 1852, entitled "An ordinance in relation to the loan of the credit of the city of Providence in aid of the Providence & Plainfield Railroad and for its extension." Marked Exhibit T.

By Mr. PARKHURST: This is the ordinance of the city under which the bonds of the city were issued to the railroad company. The next are certified copies from the secretary of state of the record of three mortgages from the Hartford, Providence & Fishkill Railroad to Benjamin Hoppin, Alexander Duncan, and Samuel Ames, trustees. Two of the mortgages bear date September 24, 1852. The third mortgage was merely supplemental.

They are mortgages of the entire road in the State of Rhode Island, to secure all bonds which may be issued by the city of Providence to the railroad company, to indemnify the city. And the third mortgage is dated April 12, 1854. That was simply to add an additional trustee, being the city treasurer of the city of Providence, which was accidentally omitted in the former mortgage.

The first mortgage is to secure all bonds issued by the railroad company upon this estate in Rhode Island, and they were limited to one-half of the expenditure actually made upon the railroad. They could not issue more than one-half, and they were only able to issue $481,000.

154 A second mortgage was made, upon the same date as the first, as further security to the city of Providence mortgaging the railroad in Rhode Island for such of the bonds under the Connecticut mortgage as would make up the full amount of $500,000.

Then there is a mortgage of the railroad in Connecticut bearing date on the 25th of August, 1849. This paper is marked Exhibit V.

Also another mortgage of the railroad in Connecticut, dated March 20, 1855, which applied to an extension of the road which was constructed from Hartford to Waterbury subsequent to the execution of the first Connecticut mortgage.

Then there is an agreement between the Hartford, Providence & Fishkill Railroad and the city of Providence, in which the railroad accepted and the city accepted the provisions of the act of the general assembly, which I have already put in, under which the bonds were issued. Marked Exhibit X.

We also put in a copy of one of the bonds issued by the city of Providence to the railroad company. This is one of the original bonds; but we have a certified copy here. The bond contains this provision, in addition to the bond itself:

(Reads provision commencing as follows:

"For value received the Hartford, Providence & Fishkill Railroad assign the above bond to ——," &c.)

There is the seal of the company. This is one of the originals that have been surrendered and cancelled. It is the bond of the city of

Providence. All of them bear the same indorsement. Here is an exact copy of the bond, which is marked Exhibit Y.

By Mr. BROOKS: In regard to the bonds being precisely of the same tenor and indorsement, have you ever examined the bonds yourself, Mr. Parkhurst?

By Mr. PARKHURST: Yes, sir; I have.

By Mr. BROOKS: Do you take the statement that the bond exhibited is one of a series of precisely the same kind of the $500,000 and indorsement, and that the corresponding bonds are held by the city of Providence?

By Mr. HOLMES: I believe that is so.

By Mr. PARKHURST: The coupons have all been cut off and destroyed.

By Mr. BROOKS: It is admitted that the whole $500,000 is like that, and that the city of Providence have got the corresponding bonds of the Hartford, Providence & Fishkill Railroad, *i. e.*, bonds issued by the railroad company in exchange for these $500,000.

By the MASTER: Bonds to indemnify the city?

By Mr. HOLMES: I suppose it to be the fact. I don't see what possible relevancy it has.

By Mr. BROOKS: This is the fact that we offer to prove, *i. e.*, that the bonds issued by the Hartford, Providence & Fishkill Railroad to the amount of $500,000 at 7 per cent., corresponding to the $500,000 issued by the city of Providence, these are held by the city of Providence.

By the MASTER: It will take very little time to prove it.

155 *Testimony of Charles H. Parkhurst.*

Sworn. Examined by Mr. BROOKS:

Q. Do you know whether the city of Providence hold any, and what amount, of the 7 per cent. Hartford, Providence & Fishkill bonds which were taken for the $500,000 of the city of Providence 6 per cent. bonds?

A. The city of Providence hold $481,000 of the bonds issued under the mortgage of the Hartford, Providence & Fishkill Railroad Company, in the State of Rhode Island. They also hold 19 bonds issued by the same company, and 19 of $1,000 each, issued under the Connecticut mortgage, and those bonds have been in their possession from the time they were issued.

Q. How is it about the coupons upon those bonds due July 1, 1857?

A. The coupons upon those bonds are in my hands now. They are in the possession of the city of Providence, and always have been since the execution of the bonds.

Q. Those of January, 1857, are they held by the city, or has there been an exchange, or what has become of them?

A. Those of July, 1857, are in the possession of the city of Providence. As to January, 1857, I think they are in the possession of the trustees, and cancelled. That I will not be sure of.

(Cross-examination waived.)

Testimony of Charles P. Clark, (recalled.)

Q. Have you the check-book of the Hartford & Erie Railroad here?

A. Yes, sir.

Q. Will the check-book show how much money they had in 1868?

A. The check-book previous to this seems to have been abstracted. I cannot find it. There were a series of check-books down to a certain time, and the one antecedent to this seems to be missing.

Q. Have you endeavored to find that check-book?

By Mr. WIGGINS: Do you mean to intimate to the court that we know anything about that check-book?

By the MASTER: There is no such intimation. You would want something more substantial, if anything.

By Mr. BROOKS: There is no such intimation.

Q. Before this controversy arose, did you make search for this missing check-book?

A. Yes, sir.

Q. Are there other papers missing? Is this book the only thing that is missing?

A. No, sir.

156 Q. Have you been able to find the papers and books from time to time?

A. There are papers missing, and books missing, I think, still.

Q. That book begins in July?

A. This book seems to begin in July.

Q. Have you the checks that were cut out of that book?

A. Yes, sir.

Q. What was the whole amount that appears to be received by those checks and that check-book by A. G. Farwell & Company in July and the two months subsequent to it?

A. There seems to have been deposited in this book, between the last of July and the middle of November, $3,778,557.98, of which A. G. Farwell & Company appear to have received $2,332,368.91.

Q. How much was received by Long & Company?

A. $312,555.

(Objected to by Mr. Holmes.)

By Mr. BROOKS: We say that Mr. Long is your broker, and that holding by Long is holding by you.

By Mr. HOLMES: This was paid to Mr. Long some three years ago; what effect can that have?

Q. Do you make that statement upon the checks and the check-book?

A. I make it upon the entries in the check-book. I have the checks here. It is corroborated, I believe, by the bank-book.

Q. When was that $2,000,000 deposited, if it was deposited, in the bank?

A. By the entry on the check-book it appears on the 13th and 21st of July $2,000,000 deposited. On the 20th, the balance.

Q. It was deposited by Samuel Hall, jr., treasurer?

A. Yes, sir.

Q. He deposited on the 13th of July how much?

A. $1,000,000.

Q. On the 21st of July how much?

A. 1,000,000.

Q. On the 27th of July how much?

A. $82,500.

Q. When does this amount of money appear to have been entered in the books?

A. The fact this corporation had this three and a half millions in July, 1868, does not appear upon the main books of the corporation until November, 1869.

Q. (By the master.) It was in your cash-book?

A. No, sir. It was not entered upon the books of the corporation except in this bank-book.

By the MASTER: I mean in your bank-book.

157 Cross-examination by Mr. Wiggins:

By Mr. WIGGINS: We want to see that bank-book and all those checks. We may cross-examine somewhat. There are questions which we want to consider and bring to the notice of the master.

By Mr. HOLMES: We are not prepared to put any questions to Mr. Clark upon the subject of these accounts to-day, but there are various questions which we consider important.

By Mr. BROOKS: I would like to ask a question which will facilitate our business to-morrow. I gave notice to Long & Company and to Henry Farwell & Company to produce in this case at this trial the books of account of Henry N. Farwell and A. G. Farwell & Company for the years 1868, 1869, 1870, and 1871, the coupons described in the petition, and the same in regard to the books of G. W. Long & Company, commencing with 1868 and going through with 1869, 1870, and 1871, with the coupons described in the petition. Will you produce your books?

By Mr. HOLMES: We cannot produce them now. We will consider it and let you know to-morrow morning.

(Adjourned to Wednesday, October 11, at 10 o'clock a. m.)

WEDNESDAY, *October* 11.

Cross-examination of Mr. CLARK.

Q. (By Mr. Wiggins.) Have you the account of A. G. Farwell & Company which was settled by the Boston, Hartford & Erie Railroad Company on or about November 30, 1869?

A. I have in my possession, as clerk of the board of receivers, a series of memoranda, which I suppose to be what you refer to as the account.

Q. Where is it?

A. I have a copy of it; the original, I think, is in the safe.

Q. Will you present the original here to the court?

A. I will.

Q. Have you a copy here?

A. Yes, sir.

Mr. HOLMES. If your honor will pardon me, they put in yesterday a mass of checks, showing that a large sum of money, amounting to two millions, was paid to Mr. Farwell in 1868. They put that in without any attempt to show that any part of that money was paid to cover the Sprague's' claim.

(To Mr. Clark.) Have you got the records of the executive committee?

Mr. BROOKS. They are in my safe.

158 Mr. BROOKS. We produce all our books.

Mr. HOLMES. Well, we will produce our books.

(Defendants admitted that the firm of A. G. Farwell & Company consisted of H. N. Farwell, Asa Farwell, and Samuel Hall, jr. They also admitted that the Samuel Hall referred to as a member of the firm of A. G. Farwell & Company was also treasurer of the Boston, Hartford & Erie Railroad Company, during the period which the books show that Samuel Hall, jr., was treasurer.

Mr. Clark presented the record-book of the executive committee of the Boston, Hartford & Erie Railroad Company and the original account of A. G. Farwell & Company against the Boston, Hartford & Erie Railroad Company.)

Mr. WIGGINS. We put in now the series of accounts of A. G. Far-

well & Company with the Boston, Hartford & Erie Railroad Company, produced by the receivers, which was settled December 1, 1869. Marked Deft. 1–10 folios.

Mr. THURSTON. The gentleman refers to a paper which professes to be a settlement of certain transactions between A. G. Farwell & Company and the railroad. We insist that they be compelled to prove the genuineness of that settlement.

The MASTER. You wish them to understand that you shall insist upon their proving that when they make out their case. This comes in now merely for convenience

Mr. THURSTON. That is all.

Mr. WIGGINS. We propose to put in this account, which is the account of Messrs. A. G. Farwell & Company with the Boston, Hartford & Erie Railroad Company, rendered by them to the company and settled December 1, 1869, which is produced here by the other side, on notice. (Account marked Deft. 1–10 folios.) We propose to put in the account between Messrs. A. G. Farwell & Company and the railroad, and not the account between them and Mr. Ayres, as trustee, nor any stock account.

Mr. BROOKS. Isn't it all one paper?

Mr. WIGGINS. There were several papers and several statements. I propose to put them in one at a time.

The MASTER. The other party can put in the other part if they please.

Mr. BROOKS. Our objection is, that they put in a part of the transaction and leave out a part.

Mr. WIGGINS. They are separate and distinct accounts.

The MASTER. The other two sheets are to be considered in this case. I will put them in if nobody else does.

Q. (By Mr. Holmes.) Mr. Clark, will you read from the records of the executive committee of the Boston, Hartford & Erie Railroad, under date December 8, 1869, the report of Thomas E. Graves upon the account of A. G. Farwell & Company, and the votes then taken thereon, reading first the names of the persons present?

159 A. (Reading.) "December 8, 1869. Executive committee meeting. Eldridge, Farwell, Healy, Whitney, Sherman, Pierce, present. President in the chair. Thomas E. Graves presented his report on account of W. C. Ayres and A. G. Farwell & Company, as follows, to wit, and are on file: To the executive committee of the Boston, Hartford & Erie Railroad Company. Under your appointment made by authority of the board of directors, I have examined the account of W. C. Ayres, trustee, with the above corporation, which is comprised in two accompanying sheets. The account runs over three years of time and embraces a great number of items, and a careful examination would occupy much time. I have examined his books and mode of keeping them, and they seem to be well arranged, and any item called for was at once shown on the books and voucher; and so far as I have examined, I have found the accounts correct. Not finding time to make examination item by item, and not believing I am expected or desired to do so, I report the account for your approval or other action.

"THOMAS E. GRAVES.

"December 1, 1869.

"To the executive committee Boston, Hartford & Erie Railroad Company: Under your appointment, made by the authority of the board of directors, I have examined the accounts of A. G. Farwell & Company, which are comprised in the three accompanying sheets. I have not ex-

amined the original items or vouchers of the accounts. The items so far explain themselves that I report the account for your approval or other action.

"THOMAS E. GRAVES.

"December 8, 1869.

"Then voted, nem. con., that the schedules showing the accounts of W. C. Ayres, trustee, and the account of A. G. Farwell & Company, with this corporation are approved; and the treasurer is directed to settle with said parties on the basis of said items.

"The accounts referred to in the last vote are those presented under the report of T. E. Graves, committee, as shown on preceding page, and comprised in five sheets and having the indorsement December 8, 1869, and by me signed, have been delivered this day to the treasurer. Then voted, that the treasurer is instructed to settle the account of A. G. Farwell & Company, passed this day, upon the following terms, to wit: give four notes of the corporation for the amount due, one for $200,000 on demand and interest, three others in equal amounts, due April, May, and June 1, 1870; interest added at 8 per cent. and placed as collateral to said notes, $700,000 in the Berdell bonds.

"A true record. Attest:

"THOS. E. GRAVES, *Secretary.*"

Q. Have you the records of the directors here, approving that action of the executive committee?

Mr. THURSTON. This is on cross-examination. Are you putting it in as your case?

Mr. WIGGINS. We are putting this in as cross-examination of your witness.

A. I read from the book of directors' records, Boston, Hartford & Erie Railroad Company:

160 "BOSTON, *December* 17, 1869.

"Then the directors of the Boston, Hartford & Erie Railroad Company met. Present, Eldridge, Healy, Farwell, Whitney, Harris, Bartholomew, Currey, Sherman, Pierce, and Thompson. President in the chair. Then voted, that the doings of the executive committee as found in their records are hereby approved and adopted as the doings of this board."

Mr. THURSTON. It is on this precise point that we shall insist that the gentleman shall prove the authority of the executive committee and board of directors to pass that vote. We say they had no authority whatever.

Mr. WIGGINS. That is a question of law, and we shall not go into it at all, probably.

The MASTER. The proof will go for what it is worth.

Redirect.

Q. (By Mr. Brooks.) Will you turn to the stockholders' records of the Boston, Hartford & Erie Railroad Company, and read the vote in reference to the purchase of the Hartford, Providence & Fishkill Railroad?

The MASTER. Isn't that the same you put in yesterday?

Mr. BROOKS. The respondents require us to prove the authority to execute the consolidation contract.

A. I read from the stockholders' records, Boston, Hartford & Erie Railroad Company, under date Wednesday, 26th August, 1863:

"WEDNESDAY EVENING, 6 o'clock.

"Stockholders met according to adjournment. Edward Crane in the chair. On motion, it was unanimously voted, that Joseph W. Clark, James A. Dupee, and Edward Crane be a committee of this company, fully empowered and authorized to take a lease of the railroad property of the Hartford, Providence & Fishkill Railroad Company, and to purchase the franchise, railway, and property of said company, upon such terms, agreements, and conditions as said committee may deem for the interest of this company, and to make, execute, and deliver any and all papers with or without the seal of this company, proper to carry into effect such agreements; and if any payments shall be agreed to be made in the capital stock of this company, all proper officers of this company shall make, execute, and deliver to said committee, at their request, certificates for so many shares of said stock as their said contract may demand, to be by said committee paid over under the same."

From the directors' records, 7th July, 1863:

"On motion, it was voted unanimously to proceed to choice of committee to negotiate with the Providence, Hartford & Fishkill Railroad, for a purchase of same or lease of said road. Messrs. Clark, Dupee, and Crane were unanimously chosen."

From the directors' records, 28th August, 1863:

161 "Voted unanimously that the president and treasurer be instructed to issue so many shares of the capital stock of this company as is required by the contract of Joseph W. Clark, James A. Dupee, and Edward Crane, our committee, with the Providence, Hartford & Fishkill Railroad Company, and to deliver the same to said committee, to be by them paid over under and in fulfilment of said contract, being thirty-five thousand shares."

Mr. WIGGINS. We admit that the corporation has passed the necessary votes, if they had authority to make such a contract as was afterwards made, to make that deed of sale.

Q. Won't you point out on the records what year Mr. Graves was a director?

A. I read from the stockholders' records under date of 11th September, 1867:

"Mr. Thomas E. Graves was elected one of the directors."

Q. Is that the annual meeting?

A. Yes, sir. The next annual meeting, as appears by the records, was held the 9th of September, 1868.

Q. And Mr. Graves was not a director?

A. No.

GEO. M. BARTHOLOMEW cross-examined by Mr. Wiggins:

Q. Have you the journal and ledger of the Hartford & Fishkill Railroad?

A. Yes, sir.

Q. Have you the trustees' books?

A. No, sir.

Q. Do you decline to produce them?

A. No, sir.

There is no objection on the part of the trustees to present the books, but it would be a great job.

WITNESS. I have stated according to the record of the secretary of the trustees what coupons are outstanding by their book. That is, all are outstanding by his book which have not come into his hands, no matter where they are, whether they did come in or not; but to follow the whole detail of that evidence would require a ledger, journal, cash-book, and books of account without end, and also the books of coupons themselves, which are very voluminous.

Q. (By the master.) How many volumes will it take to show that?

A. It will take a dozen or more if you are going into the whole of the figures.

Mr. WIGGINS. I do not ask them to bring all those books; if the gentleman will bring a transcript, or inform himself from the books, so as to be able to state how that amount was made up.

162 WITNESS. I did state the other day.

Mr. WIGGINS. You stated to a certain extent, but it did not come up to anything near the figures you stated. Are you able to state how that coupon interest, which is stated in the report of September, 1868, was made up?

A. That account was made up in 1867. 1868 only varies from 1867 by about $420 on coupons.

Q. What I want to get at is, how you made up that amount of $170,000 as outstanding coupons, when the statement was made in September, 1868.

A. The amount of coupons at that time outstanding, which had not come into the hands of the treasurer or secretary, was $205,000, upon the mortgage-debt of the entire road.

Q. Did that amount include the Sprague coupons—the coupons which the Spragues held or had holden?

A. It would include every coupon which had not come into the hands of the secretary.

Q. And did include them?

A. If they had them it must have included them. It would include every coupon which had not come into the hands of the secretary.

Q. Can't you state positively, of your own knowledge, whether or not in making up that amount those coupons were reckoned?

A. I would like to read a paper which I have found since I was here last. It is pertinent to this very question I am answering.

Q. Can't you answer the question? Don't you know of your own knowledge now, and didn't you know at the time that statement was made, in September 1868, that that $170,000 of unpaid interest on coupons on the mortgages of the Hartford & Fishkill Railroad did include the coupons which the Spragues held, and which were transferred in May, and delivered in May, 1868, to Mr. Farwell?

A. Not all of them.

Q. What of them did it not include?

A. I see by this report which I have before me we should have deducted $57,597.50 as in their hands, which we claimed they should deliver up, from the $205,000. But as I stated before, they were not in our hands, and therefore we could not say they were actually paid.

Q. Deducting that from $205,000 would leave about $170,000, would it not?

A. Rather less. I stated the other day, as I then understood it, that there were $14,000 since delivered to the company and about $30,000 of the two cities' coupons, for which it was claimed the money had been paid to the Spragues. The treasurer at that time made up a statement.

Q. To what time do you refer?

A. September 30, 1857. He made a statement of the coupons which were then to be delivered to the directors—a statement got up

163 by the then treasurer, Mr. Bridgman, since deceased. In 1857 the directors of the Hartford, Providence & Fishkill Railroad Company were endeavoring to get a settlement with the Spragues, and to get from them the certificates which they claimed should be delivered to the company, and also certain notes; and this is the statement made up at that time by the then treasurer. That was the account attempted to be settled in 1857–8 by the then directors of the Hartford, Providence & Fishkill Railroad Company.

The MASTER. I understand that you claimed at that time that the Spragues had $57,000 of coupons which they should deliver up to you.

Q. (By Mr. Wiggins.) What is that paper?

A. It is a paper made up by the treasurer at the time.

Q. When was that made up?

A. I cannot tell the precise date. It was in 1857 or 1858.

Mr. WIGGINS. We cannot assume that as in, in that shape.

WITNESS. If the master will allow me to read it in verification of what I said the other day.

The MASTER. I should not suppose your statement would need any verification.

Mr. HOLMES. We have not attacked any statement of the witness.

WITNESS. I do not pretend by memory to note everything that is in figures; I would rather read.

Mr. WIGGINS. In the report which was made by the commissioners in 1868 it appeared that there were $170,000 of interest in arrear, due on that Hartford & Fishkill mortgage.

WITNESS. You will find that they use the word "about."

Q. (By Mr. Wiggins.) Now, the simple question which I want to get at is, whether at that late period of time, and after this transfer to Mr. Farwell in 1868, this account did not include the coupons which had been taken up by the Spragues?

A. That would include part of them.

Q. What part of them did it not include?

A. It should not include——

Q. I don't ask what it "should not include." What did it not include?

A. I can answer that better by a negative, because it is more definite than the other. The account should not include those coupons which were charged in their account as upon bonds owned by themselves.

Q. It seems to us it cannot be very difficult for you to answer our question. I want you to state to the court whether or not, within your knowledge, that did include those coupons which were delivered by the Messrs. Sprague to H. N. Farwell. If you have no knowledge on the subject you can say so. I ask you if you do not know that it did not include those coupons?

A. I say that it did include part of them, but not the whole of them.

164 Q. Now, what difference was there?

A. I can state it to you according to the figures I have got, if you will allow me to read this paper. I cannot do it otherwise.

The MASTER. You have a right to look at the paper, and then state by looking at the paper, if you know the paper to be correct.

WITNESS. I understand that the question is, how did we get at that $170,000 as stated by the commissioners?

Mr. WIGGINS. That is not the question.

The MASTER. Let me state the question. What they wish to come at, as I understand it, is, whether this $170,000 included the Sprague coupons, the whole of them or part of them, and, if so, what part. Now I am somewhat in the position of counsel on the other side. I cannot see why, on your theory, it should not include the whole of the Sprague coupons, because they had not been surrendered, had they?

A. They had not been surrendered.

Q. Did you not say those were the coupons that had not been surrendered to the trustees?

A. The $205,000 were coupons outstanding. They had never come into the hands of the secretary; that included everything.

Q. (By the master.) Now, how did you come at the $170,000?

A. We took out $5,000 which was upon a parcel of 6,000 bonds outstanding, which were held as collateral, and we claimed that the coupons never should come in; and also a few scattering ones, the $11,000 of bonds which had not been put out, and that made about $5,000. Then we said the coupons of the cities of Providence and Hartford would make $30,000 more, which would reduce it to about $170,000. It was claimed that the money had been put into the hands of the Spragues to pay that $30,000 specifically, and something more. While it was true that the coupons had not come into our hands, as I stated, yet Mr. Calvin Day claimed that they were ours, and therefore, in stating it to the committee, they ought not to be put in. But upon the precise figures it was stated by me at the time, that the outstanding coupons were more than the $170,000.

Q. (By the master.) This $5,000 which you deducted had nothing to do with the Sprague account?

A. No, sir.

Q. Then what you deducted of the amount of the Sprague coupons were those of the city of Hartford and the city of Providence?

A. Yes, sir. We claimed that there would be at least $30,000, and we supposed something more, and therefore we said about $170,000.

The MASTER. I don't see but he explains it now; if he does not you (Mr. Wiggins) can ask him further.

Mr. WIGGINS. Your honor understands, as we do, that the $170,000 included what the Spragues held.

165 WITNESS. I say now that the amount should have been stated larger; that is, upon the same theory, we should have deducted more than $30,000. It was claimed by the directors that we should not have returned, not only the $14,350, but 410 coupons of $35 each, due July 1, 1857, amounting to $43,247.50.

Q. (By Mr. Wiggins.) Are you reading from that account?

A. I am reading from that account, but I recollect it now, come to get into it. This is a paper I studied over a great many times a few years ago, but I have not looked at it for five years.

Q. Do you get the information you have sworn to from this paper?

A. I get it from this and other papers; I do not get anything which I have said about $205,000 of coupons being out, from having handled the book of coupons myself, but from statements made up by clerks by my direction.

Q. Then, if I understand you right, the Messrs. Sprague had no right to transfer, dispose of, or deliver a certain portion of the coupons which they did deliver to Mr. Farwell in May, 1868; they sold what did not belong to them?

A. We claim so.

Q. And the city of Providence and city of Hartford coupons?

A. The same.

Q. That they delivered over and disposed of coupons which did not belong to them; which they had no right to dispose of?

A. We claim so.

Q. That is what you say now?

A. Yes, sir.

Q. Now, can you distinguish between the coupons which you say they had a right to deliver, and those which they had not a right to deliver; I understood you to say that they had no right to sell or dispose of coupons which belonged to the bonds which they owned; did I understand you aright?

A. Did I say so?

The MASTER. Yes, you said so; but I supposed you did not mean so. I recollect your saying just that.

Q. You did not mean to say so?

A. I did not mean to say that they had no right to sell the coupons of bonds which they themselves owned; it was a slip, if I said it. I meant to make that distinction all along.

Mr. WIGGINS. I think now I must insist on his stating here to your honor what coupons he claims that the Spragues had no right to deliver and dispose of, and what the Providence, Hartford & Fishkill Railroad Company admitted they had a right to dispose of.

The MASTER. You can state that, if you have the figures to do it; it will take less time; I believe you did give it once, or an approximation.

166 A. In the account of the Spragues as I stated it the other day, on the 1st of June, 1859, they charged off 416 coupons, due July 1, 1857, $14,000; the 1st of May, 1860, they charged off 400, as of January 1, 1858, and 384 July 1, 1858; I suppose they were coupons on bonds which they owned.

Q. (By the master.) What do those sums amount to?

A. $42,715.

Q. (By Mr. Wiggins.) That was the amount of the coupons which they held at that time, which you denied that they had any right to dispose of?

A. No, sir; I don't say so. I understood the master to ask what was the amount of coupons upon the bonds which we supposed that they owned at the time; I say that they amounted to $42,715.

Q. What would be the difference between that and eighty-four thousand and some odd dollars?

A. It is $99,000 on this statement. That will leave $56,398.06 of the amount of coupons stated in their account. From that deducting $14,350, which I am informed have since been returned, would leave $42,048.06.

Q. You know they have been returned, don't you?

A. I know it is so stated.

Q. Did you ever make these objections, which you now state to the court, to the Messrs. Sprague in your discussions with them?

A. Yes, sir.

Q. State whether or not Mr. Graves was ever present with you when you had any interviews or discussions with the Spragues in regard to the settlement of this account of theirs and about these coupons.

A. I am not positive either way; I think he was at their office, but whether he saw the Messrs. Spragues themselves or not I cannot say.

Q. During these discussions, or any of them, was Mr. Abraham Paine, counsellor at law, of Providence, ever present?

A. I don't recollect it.

Q. Do you know the gentleman?

A. I don't know that I should know the gentleman by sight; I should think I had seen him.

Q. Did you ever have any interviews with him as counsel for the Messrs. Sprague in regard to a settlement of this account and these coupons?

A. I don't recollect any.

Q. Did you ever have any communication with him upon that subject?

A. I don't recollect whether I did or did not; I don't recollect ever having had any.

Q. Who was counsel for the Hartford, Providence & Fishkill during the time you were attempting to settle with the Messrs. Sprague?

167 A. Well, Mr. Graves was acting for the Boston, Hartford & Erie Railroad Company.

Q. Prior to 1863 Mr. Chapman, of Hartford, was he not?

A. No, sir; he was counsel for the Spragues, I think.

Q. Don't you know that Mr. Chapman was counsel for the Hartford & Fishkill Railroad?

A. No, sir. I should think just the other way. I think he was counsel for the Spragues.

Q. With Mr. Paine?

A. I don't know about Mr. Paine.

Q. Now, I want to ask you with reference to this settlement, and the efforts made to arrange it. State whether or not you ever knew the fact that Messrs. Farwell and John S. Eldridge, the president of the railroad, had been making efforts to purchase this claim and these coupons of the Spragues.

A. Not from my own knowledge.

Q. Didn't you know that Messrs. Farwell and Eldridge had made a proposition to the Spragues to purchase their claim and these coupons by giving their notes?

A. I did not know it at the time. I only knew it from papers. I see now.

Q. Didn't you know that Mr. Graves was making efforts to purchase this claim for Mr. Henry N. Farwell at the time it took place?

A. No, sir. I knew that he talked of settling it, but I did not know that he was doing it for Henry N. Farwell individually.

Q. Were you not informed by Mr. Farwell that he was negotiating for the purchase of this claim?

A. He might have told me so.

Q. Didn't you advise and recommend him to buy it and get it out of the way into his own hands?

A. I have recommended the directors always to buy up the claims. I was pushing for that all the time—that they should buy up the claims against the Hartford, Providence & Fishkill Railroad—buy them up for the corporation.

Q. Did you never advise, recommend, and urge Mr. Farwell to get these Sprague claims, and these coupons?

A. Very likely I did, to get it up; to pay it.

Q. When did you first become aware that Mr. Farwell had purchased this claim?

A. I can't tell the date, sir; I don't know.

Q. Didn't you know it in November, 1868?

A. I don't know what the date was.

Q. Didn't you know in November, 1868, when you conveyed that stock to Messrs. Eldridge, Farwell, and Converse, the 7,349 shares of stock, that Mr. Farwell claimed to have purchased that claim and those coupons?

168 A. I knew at that time, and Mr. Graves informed me, that they had settled and paid that claim. What we understood was, that the corporation had paid and settled it, and it was out of the way.

Q. I am speaking of what you knew. Didn't you know in November, 1868, when you transferred that debt-stock, as you called it, to those trustees, that Mr. Henry N. Farwell claimed, held out, that he had bought that Sprague debt, and had it with those coupons?

A. I knew it was claimed that that debt had been paid.

Q. That is not my question.

A. That is as near as I can answer it.

Q. Did you not know at the time you transferred this stock that Henry N. Farwell claimed, set up, that he had paid the Sprague debt and the coupons?

A. No, sir; not that he had done it as an individual. I did not know that.

Q. You say you regarded that as having been settled. What did you convey the 7,349 shares to those gentlemen for? You conveyed it to them as trustees—trustees for what purpose?

A. I conveyed it upon the representation that those debts had been settled, paid.

Q. If that were true, the stock would belong to the corporation?

A. It would, if they paid the debts.

Q. You say you considered the debts had been paid?

A. This Sprague debt had been paid. It was so represented to us.

Q. Then why were you transferring this debt-stock to the trustees?

A. I did it on the order of the court and the vote of the directors.

Q. Where is the order of the court? Order of what court?

A. On the vote of the directors and the order that I should transfer it.

Q. Have you the order of the court here?

A. No, sir, I have not. The directors passed votes requesting us to transfer that stock.

Q. I want to get your answer to this question: Why, if these debts had been paid, and if the Sprague claim had been paid, and these attachments had been removed, did you transfer that debt-stock to Messrs. Eldridge, Farwell, and Converse, as trustees? Why didn't you convey it to the corporation?

A. Because the corporation, by vote of the directors, requested us to convey it to those gentlemen as trustees.

Q. For what purpose?

A. I don't know for what purpose.

Q. When was that vote passed?

Mr. THURSTON. It was put in yesterday. I can't give the date.

Mr. CLARK. I think it was on the 20th of July, 1868.

Q. Were Messrs. Eldridge, Farwell, Converse, and yourself, and your co-trustees present when that transfer of this certificate was made?

169 A. I should think not, sir.

Q. Where was the certificate signed by Messrs. Hutchins and Hooker?

A. That I don't know, sir.

Q. Who brought that certificate to Boston?

A. I don't know that.

Q. Where was that transfer signed—in Boston or elsewhere?
A. I don't recollect, sir.
Q. Where was it delivered?
A. That I don't recollect.
Q. Who delivered it?
A. I don't know, sir, but I probably did.
Q. Don't you remember that you delivered it?
A. I can't remember it.
Q. Were not Messrs. Eldridge, Converse, and Farwell all present when you delivered it?
A. I don't remember.
Q. Then the only explanation you can give of the tran'fer of that stock to the trustees is because the court ordered it to be transferred to them, and the directors voted to have it so transferred?
A. No, sir. We transferred it to those gentlemen as trustees because the directors requested us to transfer it to them.
Q. Were you present at the meeting when this vote authorizing the transfer of this stock to these gentlemen as trustees was passed?
A. I don't know. The record must show.
Q. State whether or not, at or about the time of the transfer of this stock to these gentlemen as trustees, any conversation was had between any of the parties in your presence and hearing in regard to this Sprague claim in November, 1868.
A. I don't remember any at that particular time, sir.
Q. Didn't you understand at the time that that stock was transferred to these gentlemen that it was to be used in the same way and for the same purposes for which it had been placed in your hands—to liquidate the outstanding claims of the Hartford, Providence & Fishkill Railroad Company?
A. I supposed that the proceeds of it would go for that purpose.
Q. I want you to state whether or not you did not agree or consent to the payment of interest upon these Sprague coupons, and other outstanding coupons of the Hartford & Fishkill?
A. I should say that I did not agree to the payment of interest upon those coupons.
Q. Never agreed to it?
A. I should say not, according to my recollection.
170 Q. Did you not do so, so far as concerned the Hartford & Providence city coupons? Can you tell whether you were present at any meeting of the directors when they passed a vote to pay the interest on those coupons?
A. I do not recollect having voted to pay the interest on the city of Providence coupons. I did say to one of the officers of the city of Hartford at one time that so far as I had authority from a certain time I would agree they should have interest; but I could not pledge anything about it.
Q. Don't you remember whether or not you were present at any meeting of the directors of the Boston, Hartford & Erie Railroad Company, at which votes were passed?
A. I should say I was present at some meetings when votes were passed, authorizing the payment of interest on coupons.
Q. You did not dissent?
A. I should say not, sir.
Q. You were president of the road at the time those votes were passed?
A. I don't know. I don't know when they were passed.
Q. January 8, 1864?

A. January 8, 1864, I was president.

Q. State whether or not you were authorized, some time in May, 1865, to buy the Hartford & Fishkill outstanding coupons, and receive interest thereon.

A. The book will show whatever it was. I don't know the details about it. I never agreed to pay interest to anybody outside, excepting the conversation I had with the officers of the city of Hartford, according to my best recollection.

Q. Did Mr. Farwell ever invite you, in any way, to pay these coupons?

A. I don't recollect anything positive about it. I have the impression that he stated he had the account, but I won't be positive. I don't recollect about it, sir.

Q. Was there not a notice served upon the company and a demand from Mr. Farwell in writing for payment of the coupons and the account?

A. My memory is not good about that at present. I should have to refer to papers to refresh my memory about it.

Q. Within eight months was it not served upon you at Hartford?

A. I don't recollect positively. There have been so many papers served on me I cannot carry them all in my mind. I can refer to papers and see if there was such a paper.

Q. Haven't you got such a paper?

A. Not with me. And I don't recollect of having any anywhere.

Q. (By Mr. Brooks.) You were asked about taking up claims against the Hartford, Providence & Fishkill Railroad Company, and in regard to the assignment of claims that were taken up. Can you state anything further in regard to the matter after examining your papers?

171 A. I found a bundle of claims which I purchased as long [ago] as when I was president. I believe I bought them all, or nearly all, at that time. I found that the notes were indorsed without recourse, but the accounts were almost invariably transferred to George M. Bartholomew and his assigns.

Mr. WIGGINS. We object to the testimony as immaterial and incompetent.

The MASTER. It is entirely remote. It is not a legal conclusion. I would not take it, because I never shall think of it. I understand it has been conceded, at least it has been mentioned by different witnesses, that this was the practice of this railroad. Well, if it was the uniform practice, it would not be a ground on which any legal conclusion could be inferred that this was the case with the Sprague account, because it must be proved to my satisfaction that this was a bona-fide transaction between Mr. Farwell and Mr. Sprague, by the use of his own money, and when he had a right to use his own money instead of the corporation's money. It would be very questionable whether, if he had the corporation's money on hand for the very purpose of buying this debt, and was the fiscal agent for the purpose of buying it, he could go and make the transaction with his own money. But if he had no money of the corporation whatever, and wanted to get the claim out of the way, and had to use his own money, then, as I said before, the question would be whether his relation to the corporation was such that he might hold it as his individual property. Assuming the fact that other persons did this, it is not legal evidence.

Q. You were asked whether the coupons taken up were put into the custody of the Boston, Hartford & Erie Railroad Company, or into the custody of the trustees of the Hartford, Providence & Fishkill Railroad Company.

A. It was discharged.

Q. When was it?

A. I think the same day, sir. We settled with them up to November 14, 1863.

Q. And they settled on the same date.

A. I gave them a check for account.

By Mr. BROOKS: We produce these papers out of the hands of the receivers of the Boston, Hartford & Erie Railroad. The presumption is that they have been delivered. I will put in the paper, (marked Exhibit D[1].)

By the MASTER: Perhaps I ought to explain to Mr. Thurston the extent of my ruling as to what Mr. Bartholomew had done in regard to taking up claims and the ground of it. I presumed you would infer that. It was because that was a transaction with other parties, and my ruling would not extend to anything which Mr. Farwell has done, but to show that he has been in the habit of doing that.

By Mr. THURSTON: I should infer it.

By Mr. BROOKS: I put in the record of the suit in Connecticut by A. & W. Sprague against the Hartford, Providence & Fishkill Railroad, bearing date of January 1, 1868. It enumerates the attachments of real estate under it, commencing about that time and extending along for three or four days, in the State of Connecticut; and an entry on the 5th day of July, as shown upon the docket, of "withdrawn in vacation, August 5, 1868, and entered under the statute as No. 1 in the September term, 1868, with the entry of a withdrawal in vacation." The withdrawal of the suit was on the 6th day of August, 1868, (marked Exhibit E[1].)

The record of the disposal of the suit of Spragues vs. Hartford, Providence & Fishkill Railroad, which was pending in Rhode Island, gave the day of the term, but did not give the month nor the day of the month when the entry of "settled" was made. I sent down and got a statement by the clerk of what day it was.

The copy of the record of the suit is "A. & W. Sprague vs. Hartford, Providence & Fishkill Railroad, continued nisi sixty-third day and contin. removed and case settled."

That is the entry. The certificate of the clerk is this:

"I, Charles Blake, clerk of the supreme court of said State for the county of Providence, hereby certify that the case of A. & W. Sprague vs. the Hartford, Providence & Fishkill Railroad, 3310, was entered 'settled' this sixty-third day of the March term of said court, to wit, June 18, 1868, as appears by the files and records in the clerk of said court's office," &c.

The date of the entry of settlement is June 18, 1868. (Marked Exhibit F[1].)

One of the papers produced by Governor Washburn was a claim by the Sprague Manufacturing Company, which purports to be signed
175 by the treasurer of the Sprague Manufacturing Company. It is an account called the A. & W. Sprague claim. We wish to prove now that A. & W. Sprague & Company and the Sprague Manufacturing Company are the same. That is the claim referred to in this controversy.

By Mr. WIGGINS: I don't know whether they are the same or not.

By the MASTER: Do the defendants admit that they are the same?

By Mr. HOLMES: No, sir. We will admit this: that the firm of A. & W. Sprague expired and was dissolved in some way, and that a corporation took up the business composed of the same parties and holding the same property.

Testimony of Emory Washburn (resumed.)

Cross-examination by Mr. Wiggins:

Q. You have a printed copy of the various State papers of 1868 which have been put in.

A. Yes, sir; you will find that on page 14, down near the bottom, there is a statement that the Hartford, Providence & Fishkill Railroad issued some mortgage bonds to the amount of $2,055,000. To this is to be added arrears of interest, $170,000. And on page 16 you will also find, near the bottom, where it is stated that Mr. Henry N. Farwell states that all the bonds issued, &c., leaving the sum of $9,904,650; outstanding $2,780,000, which includes interest outstanding of $170,000; and the same amount is mentioned in other portions of the book.

Q. How did you make up or ascertain that amount of $170,000? What did you understand it to be at that time?

A. My belief is that we got it from what you will find on page 22—Mr. Barry's statement, I find that statement; and we depended upon him for his account. We never saw their accounts. We had all those papers, contracts, and everything of that kind before us, but the results of the business we could not tell, or the amount outstanding we could not tell, except for information that we got from Mr. Barry under date of July 25. Our report is dated on the 31st of July. We had that date. I have no doubt that is is printed correctly, because it was meant to be. On the 22d page Mr. Barry says, "There is of the Hartford, Providence & Fishkill Railroad, $2,055,000: amount of interest of Hartford, Providence & Fishkill Railroad, $170,000."

Q. Those you understood to be coupons outstanding which had not been paid.

A. I did not understand the form in which it was, because those bonds were never so. We meant to get at the amount of the claim upon the road, whatever it was. The form of it was not of so much consequence. But there were outstanding bonds of $2,055,000. There was no particular amount fixed for which they could issue bonds. Therefore we wanted to ascertain. And we got in this way the amount for which it was said bonds had been issued, $2,055,000, and that there was interest in arrears of $170,000.

176 Q. Do you know for what years, or what period of time, that interest was in arrears?

A. Not at all. All we wanted, or tried to get, was the state of things at the very time we made a report to the governor; because the object of it was to know what the assets were, and what claims there were against this $20,000,000, for which that was pledged, or for which it was to be holden by the terms of it.

Q. Then if I understand you it is this: that the Hartford & Erie Railroad, through its treasurer, represented to you that there was interest in arrears due on the Fishkill bonds to the amount of $170,000. That is the representations made you from the Hartford & Erie Railroad.

A. That is what I got from Mr. Barry. He signed as assistant treasurer, and also at a subsequent time, according to my recollection. A gentleman whom I believed was one of the trustees, Mr. Bartholomew, made the same statement as to the $2,055,000.

Q. And as to the arrears of interest?

A. I don't recollect as to his saying anything as to the arrears of interest. I could not say that he did not, and I could not say that he did. The letter which I gave the other day was a statement. My impression is, that that is $2,055,000, without saying anything about the interest.

Q. Do you have reference to the affidavit of Mr. Bartholomew?

A. No, sir. The letter signed by him, and countersigned by Day.

Q. Then, if I understand, all the information you had in regard to the $170,000 of interest on these bonds you derived from Mr. Bartholomew's statement, and the statement of the Hartford & Erie Railroad, through its assistant treasurer, Mr. Barry.

A. The statement upon which we first made it was, according to my recollection, (because I have no knowledge of any other means that we could have,) when we made our first report on the 31st of July, we then derived our information from a statement by H. S. Barry. Then Gov. Bullock addressed a new communication to us, in which, if you look at that paper, you will find that that subject is one that he wants an especial answer about. And therefore we took measures to ascertain as well as we could, and we got Mr. Ashburner to see Mr. Bartholomew, and in consequence of that, Mr. Bartholomew communicated to Judge Bigelow, as one of the commissioners, the claim that was outstanding, and upon the strength of that, together with Mr. Barry's statement, and also what Mr. Farwell had told us from time to time, (because we were constantly in communication with him,) we became satisfied, from those various sources, that there was that amount due, and of course we could not know it in any other way.

Q. Now, in regard to the $4,000,00 which was received from the New York & Erie Railroad, I want you to state how that was placed or arranged, or whether or not it was not so placed, arranged, and secured, that no part of it could be expended for any other purpose than the actual construction of the road; and whether or not you did not
177 require the railroad and certain individuals to give security to the State that it should not be appropriated for any other purpose.

A. The history of that matter, if you want the history of it from the beginning, is this: There were $2,000,000 that Mr. Farwell showed us that they had in bank.

Q. Was it to the credit of the railroad company?

A. I supposed so, though I could not say, for I did not see the way it was entered, how the credit was, but it was the result. As I understood Mr. Farwell, the Erie Railroad bought of the Boston, Hartford & Erie Railroad $5,000,000 of bonds, and were to pay $4,000,000 in money for it; that he received for that a check, or something that answered for money, for $2,000,000, and the acceptance of the Erie Railroad for $1,570,000, and we were satisfied, and we so reported to the governor and council that that money was on hand. That was when we made the report to the governor, when the second inquiry was made. Then as to the validity of that acceptance, (because that became a question whether it would be valid or not,) the opinion of Mr. Evarts and Mr. Eaton was taken, and it became necessary for us to answer that also. In our second report I think you will find (I have not looked at it for a long time) we stated that there was so much on hand now that we were satisfied that they had the $2,000,000. We asked Mr. Farwell what had become of the money. It was a part of our duty to know that the Boston, Hartford & Erie Railroad had the means of completing the road. We had made a calculation that the Berdell bonds, if properly applied, would complete the road into something like a million of dollars, and that it must be used for that purpose. We then, having the money in bank, began to inquire of Mr. Farwell from time to time what had been done with that money. He told us that a portion of it had been loaned and used, as I understood him, by A. G. Farwell & Company—some portion, I don't know how much. He told us (I would not say but he used

the word "ring," but I do not know,) that there was a company that were using the money of the road for the purpose of operating upon their stock in buying up the stock. We told him that we did not think that was a proper way to use the money; that we thought it ought to be saved for the purposes of the road. His reply was, that they could not afford to have it lie there dead, or something of that kind; that it was to be used. We then said to him, "You must let us know who have borrowed this money, so that we may know that it is in a safe place and in safe hands, because we are bound to report to the governor from time to time whether they have the assets." We called upon him more than once, and some pretty decided language was used between Mr. Farwell and the commissioners about it. He declined, and said he would not do that. He named only two persons, and those who constituted the persons interested in the transaction declined telling—(interrupted.)

Q. Who were in the "ring?"

A. Persons operating in buying the stock. My impression is that Mr. Farwell used the word "ring." I will not be certain, because it might have been used on our part. The word was sometimes used. We then said to him, "We cannot certify to the governor and council in favor of any other loan being made unless we know what has become of those $2,000,000." The other we had not then supposed about. It was acceptances, and my impression is that they were not due, but they may have been. At any rate we wanted some account of what should be done; and we then said to him, "The only thing that we will do is to accept, with the proviso that it is satisfactory to the governor and council, and that they choose to accept it, an agreement from responsible men that that money shall be forthcoming whenever it is wanted (needed) for the benefit of the road. We did not say we would take it. We had no right to do it. We merely suggested it as a way. They brought us a paper signed by several persons. Mr. Farwell was one of them, I think Mr. Eldridge another, and I think Mr. Whitney another, and we drew an additional certificate, a certificate that "if that was satisfactory to the governor and council," (in language of that kind; I do not pretend of course to give the precise phraseology,) we were satisfied the work had been done, and if they were satisfied with that as security then they were entitled to it.

178

Mr. Farwell afterwards told us and the governor, too, and Mr. Eldridge also, but Mr. Eldridge more particularly, that the governor and council would not accept that paper; that they got the attorney-general to draw a bond which was satisfactory to the governor and council, as we understood, and that upon that they had got their money. That was that statement.

Subsequent to that time, according to my recollection, there was a second call for another certificate. We were to give a certificate for $100,000 whenever they had done $200,000 worth of work.

Mr. Ashburner showed the vote, and that got to a conversation between Mr. Farwell, Mr. Whitney, and myself, in the presence of Mr. Healey, in the office of the Boston, Hartford & Erie Railroad, in which Mr. Whitney told me, in the presence of Mr. Farwell, that he considered it a piece of impertinence on our part to ask them what they were doing with their money. Mr. Whitney said that in the presence of Mr. Farwell; and my reply to him was given, and they declined to tell us where that money was, and they also at that time agreed to render a statement of their accounts to us; and upon the strength of that, and upon the strength that the governor had had that bond, we signed,

according to my recollection, a certificate for a $100,000. But there was no account after that rendered to us at all. We called at the office. I called upon Mr. Farwell. There was no account rendered by Mr. Farwell of what the money was or where it was, or what the state of the account was. That, I believe, is the sum and substance of what I know about that money.

Q. Have you got a copy of that bond?

A. No, sir; I had. I got it from the treasurer's office, and that was after we were removed from the commission, according to my recollection. At any rate it was after this transaction, I would not say as to the date, I went to the treasurer's office to get a copy of that bond, and did get a copy of it. We never saw that bond.

Q. When did you go out of office?

179 A. I could not tell when the act of the legislature turned us out.

Q. Have you got a copy of that bond?

A. It was among the papers. I have not seen it lately. Perhaps it may be with Judge Bigelow now.

Q. Did I understand you rightly when you said, as I supposed you said, that they did get a $100,000 on that bond, or that that bond had been filed with the State?

A. We gave an additional certificate. We were to be satisfied of two things: first, that the work had been done; and, second, that the road would be completed; that they had the means [of] completing the road; and we made our certificate, or intended to make it, that we were satisfied the work was done, and all we could do was to report to the governor and council; if they were satisfied with the security that that money would be used by the road, then the loan ought to be made by the State. It was hypothetical on our part. We never assented to that bond, nor had anything to do with it.

Q. Have I understood you rightly in this particular also, that Mr. Farwell informed you commissioners that A. G. Farwell & Company had a considerable amount of this money themselves in their possession?

A. My recollection is that among the persons to whom he said they had loaned it he mentioned A. G. Farwell.

Q. Was it a considerable amount?

A. Yes, sir; I could not state that I remember the sum. If I am not mistaken, Mr. Barry at the same time made a similar statement to that. I could not say for certain. He either did it in writing or orally. On reflection, I would state that it is on the 44th page of the printed pamphlet.

This is Mr. Barry's statement, (indicating.) That is the statemen of September 16, our return to the governor and council. The second turn is September 21. On September 16 Mr. Barry did state to u memorandum of $2,000,000 held by the Boston, Hartford & Erie Rai road; then he says how much has been paid. Memorandum of A. G. Farwell & Company $530,000.

Q. That was the disposition made of it?

A. That was the information given to us, and what we reported, according to my recollection, to the governor and council.

Q. We would want the whole of the memorandum put in. The whole pamphlet is considered in for any purpose.

By the WITNESS. I believe that almost everybody who knows anything about it knows what the pamphlet was, and had something to do with the pamphlet before they got through.

Redirect:

Q. (By Mr. Thurston.) At any of these interviews with Mr.
180 Farwell, in which you inquired concerning the money investment in his hands, was there any assertion made to you that the road, as a road, were operating in their stock?

A. No, sir; the contrary. He said that the parties were the ones that were operating in it.

Q. In short, if I understand you right, you did get the statement from him that individuals had borrowed this money and were using it in speculation, and did not get the impression that the road, as a road, were using this very money in stock speculation?

A. There never was the slightest intimation of that kind. They told us who the persons were that were using the money for stock speculation. We expostulated with him, and it led to a pretty warm conversation between Mr. Farwell and some of the commissioners in consequence of it. We thought it an improper use for the directors to be making of the money.

Q. (By Mr. Brooks.) Did he produce any papers relating to the contract between the Hartford, Providence & Fishkill Railroad, and the Boston, Hartford & Erie Railroad, or the deed and lease?

A. I have got a book and I could tell from it. There was, I should think, half a bushel almost, a very large quantity, at any rate, of papers, which we supposed embraced everything from the first organization of each of those companies; and all the changes and every contract that was made in regard to them were before us. It was upon the strength of that that I made the report. I have got these papers. I have no mark upon them to indicate that these were papers in my hands. I know that they sent us what we had any reason to suppose had anything to do with the change of title from the first organization of each of those roads up to the final organization of the Boston, Hartford & Erie Railroad. They were all in our hands, and I examined them and made notes of them, and I could get them if it is desirable. I have got, I have no doubt, the original abstract that I made of those papers, if there is any question about it.

Q. Was there any discussion as to the validity of that contract between the Hartford, Providence & Fishkill Railroad and this corporation, other than about the lease and deed as to the title under it, between you and Henry N. Farwell?

(Objected to by Mr. Holmes as immaterial.)

By the MASTER. What you propose is to show that Mr. Farwell recognized the deed.

By Mr. BROOKS. That is what we started upon. The governor says he could not identify the paper. I am now inquiring what Mr. Farwell said about the title.

By the MASTER. They have not cross-examined upon that point at all, and, of course, you could not re-examine. I recollect that he said something like what you are inquiring about in his examination before.

Q. Did you ever see the affidavit which I have in my hands, in this case, of Geo. M. Bartholomew, in regard to that $170,000?

A. I think you will find that the interrogatories are in my handwriting, sir; those that he answered. I drew them up, (showing paper;) that is my handwriting, sir.

181 Q. Did you see that statement of $170,000 at any time?

A. This affidavit is one that we received in answer, after the governor made his second application. We got all these things verified. This

(indicating) is earlier; this is on the 25th. I have no doubt of it, because I drew up these questions which are appended to this affidavit. That is filled up in my handwriting, and I have no sort of doubt about it. Among such a multitude of papers I could not swear to any identical ones, except as they have the marks upon them. The affidavit is the 25th of May, 1868. It was before we made our first return.

Q. Was not that the first intimation you had of that amount? Didn't the $170,000 come from that affidavit?

(Witness reads part of the paper.)

A. Oh, yes, sir. This is a copy of the paper that we sent to every one.

Q. Is that the paper you got your $170,000 from?

A. We sent it to the public to know what claims there were outstanding on the road. Not knowing what they were, we got a return from various persons, and we prepared to get an act through the legislature by which we could interrogate witnesses as if we were magistrates; and we prepared a set of questions to various persons, and one of them Mr. Bartholomew. In reply to that we got this answer, and that was of course the way that we got it. And if it was before Mr. Barry made this statement, which I believe it was, then we got that in that way. That is the original paper, sir, (indicating.) We wanted to ascertain the amounts that were outstanding upon the road, and drew up those questions. I drew them up and they were printed. I should have to answer you that I probably found it out in that way.

Adjourned to Monday, October 16, at 10 o'clock a. m.

MONDAY, *October* 16.

The hearing was resumed at 10 o'clock.

Mr. Holmes stated that the books of Mr. Farwell were at the disposal of the other side.

GEORGE W. LONG sworn.

Q. (By Mr. Brooks.) You are of the firm of George W. Long & Company?

A. Yes, sir.

Q. Your firm is composed of yourself and who?

A. Mr. John C. Watson.

Q. You are the respondent to one of these petitions?

A. Yes, sir.

Q. Have you $15,000 of coupons of the bonds of the city of Providence, which are described in the petition against you?

182 A. No, sir.

Q. Where are they?

A. They are in the hands of our counsel, I suppose; I don't know; I presume they are.

Q. Did they ever come into the possession of your firm?

A. Yes, sir.

Q. When did your firm receive them?

A. I think it was early in November last year.

Q. Was there any writing accompanying the receipt of them?

A. Not to my knowledge; I think not.

Q. From whom did you receive them?

A. From Henry N. Farwell.

Q. Where was he when he delivered them to you?

A. I think he brought them into our office.

Mr. WATSON. I want to correct Mr. Long about that. I received them.

Q. How do you fix the date?

A. I fix the date from the time that Mr. Watson went down to Providence with them.

Q. When was that?

A. I think it was in November; about the time that we received them.

Q. Were there any papers passed between you or your firm and Mr. Farwell in respect to those coupons?

A. I think not.

Q. Did you give Mr. Farwell anything for the coupons?

A. I think not; I didn't.

Q. Did you open the package of coupons and examine them?

A. I did not.

[Defendant's counsel produced two packages of coupons, one of city of Providence coupons, and the other coupons of the Hartford, Providence & Fishkill Railroad.]

Mr. WIGGINS. These books, called for by notice from the plaintiffs to be produced, are here. We have produced them, and are ready to produce them now so far as they can use them as part of their case, if they desire to. We wish it understood that our offer to produce the books, in compliance with the notice, does not extend to our side of the case. We may or may not find it necessary to produce the books. We are ready to produce them now for your use if you desire, and that is your notice.

Mr. BROOKS. Our notice extended to the whole case. Whenever it shall become necessary to use those books, if it shall become necessary, we shall ask you to produce them.

Mr. WIGGINS. You don't want to use them?

Mr. BROOKS. We don't, at the present stage of the case.

Mr. HOLMES. We suggested at the beginning of this hearing
183 that the assignees in bankruptcy were the proper parties to prosecute this suit, and not the receivers. It is a point which we do not care to press now, because we propose to meet it before the court; but to save the point, we offer in evidence a certified copy from the district court of the United States of the assignment by the register, S. Lothrop Thorndike, to Charles S. Bradley, Charles R. Chapman, and George M. Barnard, assignees. (Marked X[1].)

THOMAS E. GRAVES sworn.

Q. (By Mr. Wiggins.) You are a counsellor at law.

A. I am.

Q. Will you state your professional relations with the Hartford & Erie Railroad, when they commenced, and up to what time they continued for the railroad corporation?

A. My connection with them as counsellor commenced with the application for their charter, and it closed on the appointment of receivers in August, 1870.

Q. State whether or not you had any connection with the settlement of any of the outstanding claims of the Hartford, Providence & Fishkill Railroad which existed in August, 1863.

A. I had connection with every one of them so far as I know and believe.

Q. At the time of the alleged sale or transfer or merger of the Hartford, Providence & Fishkill Railroad with the Hartford Company, what was the amount of the indebtedness of that Hartford, Providence & Fishkill Railroad, so far as you recollect?

A. It was an uncertain amount, represented to be between two and three hundred thousand dollars, depending upon sundry law-suits then pending, and various other matters.

Q. State whether or not you ever received from George M. Bartholomew a statement of the claims which existed against that Providence, Hartford & Fishkill Railroad at the time of this alleged lease or sale.

A. I did.

Q. Have you such a paper with you?

A. I have.

Q. Will you produce it?

A. This is the original paper, furnished me by Mr. Bartholomew, with annotations by him, which represented the claims as they then stood, except an uncertain amount which was claimed by contractors who had built the road.

Q. When was this paper delivered to you?

A. About August or September or October, 1863. It is labelled on the outside, "List of bills payable against the Hartford, Providence & Fishkill Railroad, and residences, October, 1863."

Q. Is that label in the same handwriting as the contents?

184 A. Yes, sir.

Q. Was that in there when you received it?

A. Yes, sir.

Mr. WIGGINS. We put in the paper, so far as the entry of the amount due the Messrs. Sprague ($167,000) is concerned, showing that Mr. Bartholomew at this time communicated this amount as the amount of the indebtedness of the corporation to the Messrs. Sprague to Mr. Graves, who was acting for the Hartford & Erie.

WITNESS. That should have an explanation. There is another paper which should go in in connection with it.

Q. Where is that?

A. I have it in my hands. I received this from Mr. Bartholomew at or about the same time. It is in his own handwriting, and is in explanation of that first item, the $167,000. That paper shows that the Spragues had a claim of $167,000. To do justice to all parties, I should explain that. A part of that $167,000, as was explained to me, was made up of the sum of $25,000 which was secured by mortgage; the balance I will explain by-and-bye, with your permission. This paper reads in this form:

"SPRAGUES.

HARTFORD.

No. 1, Railroad row.
" 2, On Walnut street, cottage.
" 3, do.
" 4, Butler lot.
" 5, Lot on Chestnut street.
In Canterbury, 14 acres from Morgan Sa'ford.
" Bolton, 20 " Samuel Hamilton of Betsey Day.
" do 27 " George Bunce.
" East Hartford, (building only, not land,) S. Pitkin.
" Hartford, (outside of 3 rods from center,) Lyman Stock-
" bridge.
" North Meadow, 4 acres from Joseph Terry.
" Bristol, 3 " John H. Parker.
" do. 3 " James M. Bunce.
" Waterbury, 3 dwellings only, not including the land."

Q. Now will you explain the connection of the two papers?

A. Yes, sir; I will explain. The Spragues, as part of that $167,000, had a mortgage upon this property which is here described. It remained in that form until, perhaps, 1865, when Mr. Bartholomew and myself, in our plans for the enlargement of our business in Hartford, desired Railroad row, which is a block of houses lying at the west of the
185 Hartford & Erie depot, and Mr. Sprague desired to close out this mortgage. Mr. Bartholomew, then president of the road, took this matter in hand; it was closed up, but how, I don't know. I only know this: that Mr. Bartholomew purchased Railroad row in the interest of the railroad company, and there was a talk between him and me that he should take all the funds held by him as trustee to pay in part for Railroad row, so that it should be perfectly safe for him individually to advance part of that money. He did buy Railroad row; and from the time of the purchase until now it has been held, as I understand, in the interest of the railroad company; that is, whenever the railroad company pay him for what he has invested in it, they have the privilege of having that property. What has become of all the rest of those acres of land and buildings I have no knowledge. Another fact in explanation: there was a quantity of stock held by the Spragues in some way, I don't know how.

Q. What kind of stock?

A. Hartford, Providence & Fishkill stock; and there is a vote which, if you will give me the directors' records, I will show you.

Mr. BROOKS. Mr. Graves states a great many things which cannot possibly be evidence, because he does not state them in such a way as to show that he knew. These statements in regard to mortgages, votes, and records cannot be evidence in the form in which it comes in.

The MASTER. It must come in as it did on the other side, subject to all exceptions to it. Perhaps it is not important to go into this.

Mr. WIGGINS. I only took the suggestion of the witness, that it was proper to have that paper in connection with the other, so far as it explains the other.

Q. (By the master.) Does that stock held by the Spragues lessen their claim?

A. It was in some way connected with this matter, and should affect the claim; but it does not affect the claim in controversy here. It is only in explanation why this account was $167,000.

The MASTER. That is not important, as they afterwards settled it for $135,000. That is all we should care to know. There is no question, I believe, but that the settlement with the Spragues was all proper.

The WITNESS. It was only to provide that hereafter nobody might charge me with withholding anything.

Q. (By Mr. Wiggins.) Among the debts mentioned on this paper given you by Mr. Bartholomew is the Sprague debt; won't you state whether or not you, in connection with Mr. Bartholomew, ever made any examination into or investigation of the Sprague claim, and in reference to the coupons which they held, as they claim, as collateral to it? And if so, how early and how often? State what took place in regard to the coupons and the claims.

A. Some time after the drawing of the contract of August, 1863, which has been referred to here, and after those papers were referred to me, Mr. Bartholomew brought and showed me that account which he has exhibited here in court, the identical paper of the Spragues' claim,
186 and he and I went over it carefully, more than once, more than twice, a number of times, because he was very anxious about the

account. He was anxious in regard to the items of the account, and accordingly we studied it, and I came to some positive opinions about it. We conferred with Mr. Day, and we got all the information we could get at Hartford. The president, who had to do with the affairs of the Fishkill road, was dead. The party to whom we should have naturally gone for information, I say, was dead. There was no one living at Hartford connected with the Fishkill road, who had to do with the making up of those items. The result was, that we went to Providence together, and called upon Governor Sprague, with the bill in hand, and we had a full conference with him. I recognize that bill as the identical one that I saw at that time, by sundry pencil-marks upon it. Mr. Bartholomew and myself, I say, went to Providence and had an interview with Governor Sprague.

WITNESS, (continuing.) We stated to Mr. Sprague that we desired some explanation of this matter. First we stated to him the condition of what Mr. Bartholomew calls the "stock-trust." We had the contract there, and it was shown him how we had provided for the payment of the outstanding claims, and that if we could adjust with him, we wished he would take that stock. His answer was at once that he should decline to have anything to do with the stock; that he had got his action at law, and that must stand, unless the whole matter was arranged on a cash basis; and he should not trouble himself about this matter.

We then pressed upon him another consideration; that there was a petition in insolvency pending in the State court in Connecticut, which was brought within sixty days of the attachment in Connecticut, and that if that was passed, that would dissolve his attachment in Connecticut, and that that might affect him. His reply was, that by the terms of this contract, the Boston, Hartford & Erie Railroad were bound to pay the debts; and that they must do it, or they could not have the property; and that, therefore, of that he should take no notice.

Then we said to him that, as we viewed this contract, there were considerable amounts in it that could not be collected by him in an action at law. Then we called his attention to the coupons which had been cut from his own bonds, and asked him by what authority he made up the account upon those coupons as cash, and charged us every six months interest upon interest upon those coupons. We said we didn't deny but that he had a right to hold his own coupons, and that if he made proper demand of the treasurer, that he might collect his coupons, probably; but why did he charge cash, and make up the account in this form, charging us interest upon interest? He then stated that he made an arrangement with the president and directors of the company, that he was to advance the money to take up certain outstanding liabilities, bills payable, and was also to advance the money to take up the coupons of Hartford and of Providence; and they agreed that if he would do that he might hold the coupons that he should take up, or exchange them and make up his account with them just as though the coupons had been presented and the cash had been paid upon them; and that he might do the same thing in reference to his own coupons, so
187 that he should stand just as well with the corporation as if they had paid him the money; and that that was the agreement with reference to all these coupons.

We had studied the account, and Mr. Bartholomew pressed upon him that the 401 coupons charged in this account as "due January 15, 1858, overdue and demanded" (entered in that form,) had actually been paid by the money of the corporation. Mr. Sprague, after Mr. Bartholomew had called his attention to the matter, just how it was—I wasn't clear

about that; I hadn't examined that as well as Mr. Bartholomew had—Mr. Sprague admitted that there was some fourteen thousand and odd dollars of coupons that ought not to go into this account at all; that those coupons should be withdrawn from the account, and to that extent the account ought to be remodelled.

Then Mr. Bartholomew and myself went back to Hartford, or we were in Hartford, and examined the books of the corporation, and we found that entry upon the journal, a copy of which has been presented here (Exhibit J.) This is the entry. This cash, a portion of it, is the identical cash that Mr. Sprague claimed that he had advanced for the taking up of the Hartford City and Providence City coupons. Then I asked him further, "Well, Mr. Sprague, why didn't you exchange your coupons for the city's, and hold together the Fishkill coupons?" "Well," he said, "at that time, it was a matter of great doubt what would be the future of this corporation, and I preferred to hold the city coupons, even at six per cent., than exchange them for Fishkill coupons at seven per cent, until the suit was commenced, and then I thought it was not advisable to change the matter at all."

Q. The suit commenced by them?

A. A suit had been commenced by the Spragues; then we said to him, "How do you charge two and a half per cent. commission upon this thing?" "Well," he said, "upon that subject, gentlemen, there was no contract, but I deem that a fair commission. Upon that matter of commissions I should be willing to hold a conference. I should be willing to adjust that upon liberal terms." The commissions themselves, and the interest upon the commissions for the years that it had run, amounted to considerable sums of money. I don't remember exactly how much.

Q. About sixteen or eighteen thousand dollars, wasn't it?

A. I should say not. I should say that the commissions and extra interest upon the sums, made up as of six months, where we thought he should have simply charged interest for the whole time and not compounded it every six months; I think Mr. Bartholomew and myself made, by compounding the interest, and by what we thought was an unconscionable charge for commissions, about eighteen thousand dollars; I think that was made up of these various sums. Well, we didn't come to any terms. Mr. Bartholomew was there with a view to buy this claim. That was his purpose.

Q. With this stock?

A. No, sir; to buy it with his own money, and then take stock for it, which I will explain soon.

188 Q. Mr. Bartholomew proposed to buy this account himself?

A. Yes, sir. When Mr. Sprague said he would have nothing to do with the stock, then Mr. Bartholomew proposed; indeed, Mr. Bartholomew had bought every claim which existed against the Fishkill road and which had been taken up.

Q. Before that time?

A. Before that time. I think, I know indeed, that every identical claim which existed against the Fishkill road, and which had through this debt stock been got possession of, had every one of them been bought up by George M. Bartholomew.

Q. Now I want to ask you, and perhaps just here is the right spot, did Mr. Bartholomew, when you and he were holding this conference with the Messrs. Sprague, make any other objection to that Sprague account than what you have stated?

A. Not at all. Before that time, as I have stated already, there had

been objections made at Hartford, and we went down for the double purpose of getting Mr. Sprague's views and claims in this matter, and for the purpose of preparing ourselves and getting from him whatever we might that would be beneficial to our side in case we should be obliged to go into a contest in the courts; and from the time of that explanation by Mr. Sprague to this I have never heard, on the part of any man, any claim that Mr. Sprague didn't honestly and fairly hold those coupons as collateral to this account.

Q. Now those 401 coupons which were objected to, and which the Messrs. Sprague allowed ought not to be held by them, whether or not they did not afterwards surrender or deliver those to the Boston, Hartford & Erie Railroad?

A. They were delivered. You will observe that around one charge on this account on page 3 is a circle; that was a circle that was put round by Mr. Bartholomew in my presence, as noting that those were the ones which the Spragues admitted should be surrendered. Mr. Bartholomew notes against it, "I make it $14,017.50; they have it $14,750." Then he afterwards makes a note below it, "$14,035." I don't remember the precise sum that it finally ended down in, but Mr. Berry's receipt of September, 1868, will show the exact sum that the Spragues did finally admit should be delivered up, and the exact amount that was delivered up; and there is a memorandum that he himself made.

Mr. HOLMES. It is $14,350.

WITNESS. They call it first $14,750; Mr. Bartholomew made it $14,017.50; then he made it again $14,035; but the exact amount is what it was finally figured down to be.

Q. (By Mr. Wiggins.) You have stated all that took place in those interviews between Mr. Bartholomew, yourself and the Spragues in regard to that amount, and you have stated the final result in regard to it. Now will you please to proceed?

A. I have not stated the final result. I have not stated all that took place. I have stated that Mr. Sprague said he would be ready to hold a conference in reference to our claims of commissions, and in reference to our claims in making up the account as of every six months,
189 although that was according to the agreement. If Mr. Bartholomew was prepared to settle the account or make an offer he was prepared to entertain an offer or proposition for the account. Mr. Bartholomew then said to him that he was not then prepared to make any offer in settlement of the account, but that he would take the matter into consideration, and we parted in that way; and that is the only conversation I ever had with Governor Sprague upon that account till the fall of 1867.

Q. Then the matter rested till the fall of 1867?

A. Well, if you say "rest," no; because it was continually agitated in the mean time by Mr. Bartholomew to get it up. At this time that we were there the stock had appreciated from the earliest time. There were times between 1863 and the time of the interview between Mr. Sprague, Mr. Farwell, and myself when that stock was worth more than enough to have paid the claim. When it was worth more than enough nobody seemed to be anxious to settle it, and when it was not worth enough then everybody was anxious to adjust it. Thus the thing hung along, Mr. Bartholomew from time to time bringing this matter up and holding conversations with me; but nothing took place that brought the matter to any focus during the administration of Mr. Bartholomew. It thus passed on till the fall of 1867.

Q. In the mean time had Mr. Bartholomew gone out of the office of president?

A. He had.

Q. And who was his successor?

A. Mr. Eldridge. Mr. Bartholomew went out in September, 1866, and on October 4, 1866, he writes me this letter:

"T. E. GRAVES, Esq.:

"DEAR SIR: I presume you will look out for the Sprague suit before the court, and see that it does not go against us by default. Is there anything I can do about it? I have informed Mr. Eldridge it is in your care. Please write me.

"Yours,

"G. M. BARTHOLOMEW."

That is about the tone in which he pressed this matter. Then I have a letter from him, under date of December, 1866, which has reference to this matter of stock:

"T. E. GRAVES, Esq.:

"DEAR SIR: How do you understand the present position of a claim vs. the Hartford, Providence & Fishkill Road? Suppose I buy one of those notes, can I appropriate any of the stock now in the names of Hutchins, Hooker, and B., trustees, towards it? If not, how is stock or anything to be got for it from the Boston, Hartford & Erie, or for any claim by a creditor of the Hartford, Providence & Fishkill?

"Yours, &c.,

"G. M. BARTHOLOMEW."

The date is either November 1 or December 1, I am not clear which. It is all blurred there.

190 Q. That letter grew out of the fact, I suppose, that the trust in regard to that stock had expired?

A. Yes, sir; on the 1st of April, 1866, and he had gone out of office.

Q. The stock being in his hands, he wanted to know if he could appropriate that stock if he should buy the notes himself?

A. Yes, sir. I wrote him he could not.

Q. Now, I want to know with reference to this Sprague matter; it remained as it was at that time until November, 1867?

A. Well, sir, until the fall of 1867. Mr. Currey says November. I have no means of getting at that.

Q. Now, will you state what took place between Mr. Currey, yourself, and Mr. Farwell and others, if others were present, in regard to the purchase of that Sprague claim, and the considerations which weighed upon you to in some way get it out of the hands of the Messrs. Sprague?

A. There was pending in Rhode Island an application on the part of the Boston, Hartford & Erie Railroad Company for a charter to go from the city of Providence to strike the State-line of Massachusetts, and there meet a line which they have control of by charter; and that had been postponed one or two sessions in Rhode Island. I might say here that Mr. Farwell was very anxious to secure that charter. Mr. Eldridge did not take a very deep interest in it, but Mr. Farwell got considerably worked up about it and was bound to succeed. Mr. Currey represented to us that we had been defeated by the Spragues. I state this very generally. I could go into detail, but I don't care to go any further than gentleman desire. He stated that we had been postponed by the Spragues; that he had had an interview with the governor, and had been advised that we should never get through unless he had his money

for his claim; that if that was done we could carry our matter in Rhode Island. Well, Mr. Farwell, in view of this strong presentation of the matter by Mr. Currey, went with me to Providence. We visited Governor Sprague, and at first the governor was not inclined to say much about it. He thought he had been treated badly by Mr. Bartholomew and the road, and had been postponed in his claim a great while. I had come there once with him, Mr. Bartholomew, and he was now satisfied we came simply to spy out the land. I told him we had come in good faith; that Mr. Farwell was interested in this matter in Rhode Island, and that if anything was done Mr. Farwell had got to advance the money; the corporation had no money. Finally, after considerable pleasant negotiation, Mr. Sprague said he would take $130,000 for his claim, and assign it, with his collateral, to Mr. Farwell. I told him of course Mr. Farwell hadn't come that day prepared to close any matter. He said we might have a reasonable time to attend to it. We left and didn't close it. The result was that we were laid over again in Rhode Island the next winter. Then it came round to spring again.

Q. We should like to know what year this is.

191 A. This is in 1867. Then it passed through the winter. We were postponed again in Rhode Island, in the legislature, and it came round to the fore part of May, when I went——

Q. Why did not Mr. Farwell purchase this claim at that time?

A. Well, sir, I can't say that Mr. Farwell ever gave me any reason distinctly why he did not. I only know whenever I talked about it Farwell would postpone it, and I do not know why he didn't; whether it was lack of funds or what it was, I don't know. I don't know that he ever gave me any reason. It passed on until the early part of May, when I had another interview with Currey, and the matter was pressed then very strongly.

Q. What time in May?

A. The early part of May, sir. I then had an interview with Mr. Eldridge and Mr. Howe, and I sympathized with Mr. Currey very strongly in this matter. My long experience in matters in Rhode Island led me to sympathize very strongly with his views; and the result was that Mr. Eldridge and Mr. Farwell agreed that they would jointly buy the claim. I was authorized to write, and I did write that letter, a copy of which Mr. Currey put into the case the other day.

Q. I want you to state right here to the court, whether or not it was possible for the Boston, Hartford & Erie Railroad to buy that claim; whether it was possible for them to take that claim and pay the money; whether they had the money; whether it was possible at that time for the Boston, Hartford & Erie Railroad Company to purchase this claim, and pay the money for it; whether they had the money.

A. I knew all their means, and had known all their means from the time of their creation, and I know at that time they had no money.

Q. How was it about stocks and bonds? Inform the court in regard to all that matter. Perhaps this is a better place to do it than anywhere else.

A. I shall have to go back to it a little, to explain it satisfactorily to myself if not to you. A mortgage was made in 1864, known in the corporation as the ten-million mortgage. By the terms of that mortgage, (it was made under the laws of Connecticut,) by the terms of that mortgage the corporation could issue a thousand-dollar bond when it had actually expended in construction $2,000, and had lodged a certificate, under oath, with the comptroller of public accounts, who had to countersign every bond, under oath, of the chief engineer, of the existence

of that fact, to wit, the expenditure. When Mr. Bartholomew went out, in September 1866, we had issued every bond that we had a right to issue, and the bonds had fallen down to inside of 40 per cent. of stock; we had the right to issue, when he went out, not a large amount of stock, for we increased our capital afterwards, and our stock had got down so that on the day of his election the stock was worth $5 a share. Those were the means, and the only means, the corporation had.

Q. The day of whose election?

A. I mean Mr. Eldridge, Mr. Bartholomew being left out.

192 Q. The stock had gone down during Mr. Bartholomew's administration to $5, and the bonds to $40?

A. Yes, sir. Instead of 40, I think 35; but I am sure of 40. That was all the means that the incoming administration, Eldridge, Farwell and others, had in September, 1866. From that time onwards until July, 1868, there was no money to be had, and no money was had by the corporation, excepting upon the loan of its directors and by the sale of stock at the low price that it was then ruling. They did attempt to carry forward, and did carry forward, some construction, but that construction was carried forward by the moneys of the directors, and principally by the moneys of Farwell.

Q. That he had loaned to the corporation?

A. That he had loaned to the corporation. In May, 1868, as I said, they had no money, and then Mr. Farwell taking so strong an interest in the carrying of this matter in Rhode Island, and there may have been other motives influencing him, but that I know was the then pressing motive, that is now stronger in my mind than anything else, although there had been on the part of Mr. Bartholomew and others very strong and earnest requests that that claim should be got off from the property, and of course I, representing the corporation, had desires and motives very much different from Mr. Farwell's, or perhaps in the same direction, but my motives were to make our standing with the commissioners as good as I could. I wanted to get everything out of the way if I possibly could, to make our standing good with them, that we might reach the treasury of the State of Massachusetts. Mr. Eldridge and Farwell authorized that letter. It was declined. I refer to the letter of May 12. Mr. Sprague declined, and the ground of his declination was that he would have money or nothing.

Q. You speak about that letter being authorized by Mr. Farwell and Eldridge. It speaks there about purchasing the claim of the Spragues. Purchasing the claim for whom?

A. For them; and the letter shows conclusively that they are ready to take an assignment of the claim at once. There was not talk and never was about purchasing that claim for the corporation or with any money of the corporation at all. I never had any such talk with the Spragues in my life, because the corporation hadn't any money to buy it with.

Q. You spoke about that offer being rejected; how were you informed?

A. By Mr. Currey. I then went to Providence, and I was there during the time of those telegrams.

Q. Had you in the mean time had an interview with Mr. Farwell in regard to his purchasing the claims?

A. Certainly. I went down with authority from Mr. Farwell; I went for Mr. Farwell.

Q. After you received the letter from Mr. Currey rejecting the offer, you had an interview with Mr. Farwell in regard to the purchase of the

claim. What was the authority he gave to you, and what were his directions?

A. That does not come to precisely that form. I was going to
193 state it to you as it actually occurred. Mr. Currey informed me it could only be purchased for cash. I then went down to Providence, and then these telegrams that Mr. Currey speaks of were had between the parties in Providence and Mr. Sprague in Washington. Finally, in an interview I had with Amasa Sprague, (William was not there then,) he says, "Now, we have come to the conclusion to take $135,000 cash, but you must do one thing more, Mr. Graves; you must take up our friends." I think "our cousins" was the phrase he used. "Our cousins' executions against this company;" the executions of Tillinghast, Waterman, and others.

Q. One was Rice, Waterman & Tillinghast, and the other was Andrews?

A. Yes, sir. Then Mr. Currey was sent by me to see them, and they agreed through Mr. Currey, (I did not see those parties at all,) and the claims were offered to us at the same rate of discount that the Spragues would make on theirs. I then returned to Boston. I had no authority at this time to close this matter, and I then sent that letter. I came home and conferred with Mr. Farwell. I sent that letter to Mr. Currey, which he has produced here, of the 23d, authorizing him to take up the Sprague claim. I see I did not notice the Tillinghast, but that he understood well, because he could not have the Sprague unless he took up the whole. I gave him this instruction, as the letter shows. That is the last that occurred in the matter until the 27th.

Q. Had you informed Mr. Currey that Mr. Henry N. Farwell was going to purchase the Sprague claim?

A. Certainly. There was no other name mentioned or thought of during the whole of the negotiations; but, of course, he was working all the time for the railroad company. I was working also for the railroad company. We were both having the desire to get up this claim in some way. The railroad company was to have the resulting benefit and the immediate benefit of carrying through that affair in Rhode Island. On the 27th I was going somewhere—I can't tell where, Hartford, New Haven, or some place—and I desired not to go to Providence. Mr. Farwell insisted that I must go; he should rely upon me to see to that these papers were made right. Accordingly I went down on the 27th, arrived there in midday, and went to Sprague's. There we found Amasa, as I remember it, and the clerk, the managing-clerk, Mr. Green, if that is his name. I then inquired in regard to Mr. Currey's movements in the matter. They produced me a form of the transfer-assignment in Mr. Currey's handwriting. I examined it, pronounced it correct, and Mr. Green then, while I was there, (I was there some little while,) made up, or had made up at any rate, the paper was then signed by Amasa Sprague, as I remember it.

Q. An assignment, the form of which Mr. Currey had left there?

A. Which Mr. Currey had made.

Q. Is that the paper? (Exhibit J.)

A. I should say it was. That is the account I have seen a good many times; I think it was signed by Amasa Sprague. There was also
194 another paper which I found there last March, and which I had forgotten all about. I found that I gave a receipt for the coupons in the name of Mr. Farwell.

Q. You have not said anything about coupons yet.

A. The coupons are named in that.

Q. The account was there, but the coupons were not there?

A. The coupons were not there. They were in a bank, I think in the Globe Bank, if I remember right. They kept the trunk in the Globe Bank, and at the time when I finished up this matter and got through our talk and got this paper finished, it was too late to get the coupons. They said they were in the bank, and the bank was shut, and they could not get them that day. Mr. Currey was away also. Mr. Farwell and myself could not carry out the Rice-Waterman matter. Mr. Currey was away; he had gone to Newport. The result was, I went away, and the more I think of it the more I think I went to Newport to find Currey, and not finding him, came back the next morning and found him in Providence. I went somewhere, anyway. I went away, leaving Mr. Farwell at the Sprague's. I left him there, and I went away with an agreement to come back the next day, and to finish the balance of the matter with Mr. Currey, giving the Spragues my word that I would come back and close up the matter; and Mr. Farwell gave me authority to draw on his firm. He says: "For the matter transferred to me, draw on A. G. Farwell & Company for the amount." I went away. I came back the next day, on the 28th. On that day I went to Mr. Currey's office, and I there at his request drew the form for the assignment of those two executions. Mr. Currey took them and went out of the office; he was gone some little while. By the way, I should state that he then informed me he had sent out, and the parties had come in. They lived up on the Fishkill road some eight or ten miles. They were in and at the office of Hayes & Madison. Mr. Currey went out, and finally returned with the executions and assignments. The original executions I deposited myself with the clerk. I found the practice there to be different from what I had been accustomed to; that I could not get the execution redated, but must deposit the original executions when they had run out of date, and take out aliases. Accordingly I deposited the original executions with the original transfers on the back, and I hold in my hand certified copies from the clerk of the court in Rhode Island. The originals are on file in the clerk's office.

Q. What is the date of the assignments?

A. 28th of May, 1868. They are both in the same form substantially, with the exception of the description of the parties. One is the assignment of Francis M. Andrews to Henry N. Farwell, of Boston, in the State of Massachusetts. The other is the assignment of Alfred G. Waterman and Daniel Tillinghast, surviving partners, to Mr. Farwell. Those are the originals; the aliases I have in my hands, which are of no consequence. I then gave Mr. Currey this check:

195 "$8,239. PROVIDENCE, *May* 28, 1868.

"At sight, pay to the order of Hon. Samuel Currey eight thousand two hundred and thirty-nine dollars, being the amount of claims of Alfred G. Waterman, Daniel Tillinghast, and F. M. Andrews, assigned to him.

"Yours truly,

"THOS. E. GRAVES.

"To A. G. FARWELL & COMPANY, *Boston, Mass.*"

That is just as I think we figured it at the time. I think it is just $1,000 less than the principal and interest of the executions. I gave that to Mr. Currey; he disputed it, and drew his checks and gave them to the parties.

Q. Whether or not you did at that time take the coupons which Mr. Farwell had purchased and give a receipt for them and bring them home with you? If you have the receipt, or a copy of it, produce it.

A. I think I did. I found to my surprise—for it had passed out of my recollection entirely—that I gave the Spragues a receipt.

Q. Have you a copy of it which you know is a true copy? If so, you can produce it.

A. I have; I have seen the original.

Q. You state you know that to be a true copy?

A. I do; I made the original.

Q. Have you compared that with the original?

A. I have. I find one thing here that satisfies me of the fact. As I say, this had passed entirely from my recollection until last March. Last March I went to Providence for the purpose of investigating this very question, and there the Spragues produced to me the original receipt. I asked that a copy might be made. A copy was made, and I held the original and heard this read and looked that over, as I stated.

"Received, Providence, May 27, 1868, from A. & W. Sprague, the following-described coupons, held by them as collateral security on account of theirs against the Hartford, Providence & Fishkill Railroad Company, said account having been purchased by me this day."

Then it goes on and gives the description of the coupons, which I presume are the same as in Mr. Farwell's bill. Indeed, I knew they were at the time. This receipt is dated on the 27th. I find I signed it on the 28th. When I went back, May 28, 1868, total, $84,816.66; signed, Henry N. Farwell, by Thomas E. Graves, his attorney. That I gave on the 28th, when I went back and received the coupons and delivered them to Mr. Farwell. Since examining the papers I have no doubt of that fact. At this time I desired to receive the balance of the coupons—the $14,000 and something. Mr. Sprague asked if I was authorized to sign the name of our treasurer for them, and I said no. He said he should only deliver those coupons to the proper officer of the corporation who was entitled to receive them, and I stated I had no specific authority upon the subject, and he then said whenever we would furnish the certificate of the treasurer, he would deliver them.

196 Q. I want you to state whether or not those were afterwards sent to the office of the company, and what Mr. Currey informed you in relation to it.

A. I will state the circumstances. It passed on until, as I said before, I had a desire to make the best showing I could to the commissioners, and in the statement which I had drawn up, and which is sworn to before Mr. Barry, in July, and found in the papers of State loans, $170,900 coupons are there stated to be out against the Fishkill road. I say I desired to reduce that amount as much as I possibly could. In July, these coupons that are in this case, in dispute in this case, these $84,000 were a part of the $170,000 returned by me in that account of July as still outstanding, because they had come into Mr. Farwell's hands in May. Now I desired to reduce that as much as I could. Accordingly, in one of the early days of September, I wrote to Mr. Currey, and asked him to go and see the Spragues and see precisely what they wanted, and who they wanted a receipt from in reference to those coupons. I received this letter from Mr. Currey:

"PROVIDENCE, *September* 14, 1868.

"THOMAS E. GRAVES, Esq.:

"MY DEAR SIR: If you will procure Mr. Barry's signature to the receipt herewith inclosed and return it to me, I will receive the coupons (for I should think he means transmittance or something of that sort) in your office. I think it should be signed —— —— Barry, treasurer Boston, Hartford & Erie Railroad, successors to Providence, Hartford & Fishkill Railroad."

Q. Is that the receipt which was prepared?

A. I cannot say. I have no recollection, and I could not identify the paper at all by the copy. I saw the original receipt in the hands of the Spragues. I think Mr. Barry sent that receipt before we got the coupons from Providence. I think the Spragues did not send it. I think that Mr. Barry sent down a receipt and received a package of coupons, which I saw, and which had a memorandum upon the outside of it showing what they were. A receipt for the coupons went down to Mr. Currey, and Mr. Currey got them from the Spragues and forwarded them. He forwarded them by express. Then Mr. Barry sent another receipt after he had examined them in the bill.

Q. You were about stating how you reduced that 170,000 by this 14,000.

A. The exact amount of that 170,000, by Mr. Bartholomew's figures, was 165,000. It was not exactly 170,000, but about 165,000 by the figures. I was present when they were made up, and I wrote the deposition of his making it 170,000. That is my handwriting. He and I made up the figures. I am not able to state the sums, how they were arrived at, but I know they summed up about 165,000. In the meantime, between May and the 25th of September, the time which it appears I made up that statement, we had got back from Providence these 14,000 odd—14,300, or whatever it is. We had ascertained that there was in the hands of one Sumner, of Hartford, that he had
197 a lot of coupons which had been cut off from the original bonds, and he had sold those bonds, and the bonds had got into the hands of parties so that we knew where they were and he did not. And as I understood the law of Connecticut, and as I understand to day the decision of her supreme court to be, that coupons drawn like the Fishkill coupons cannot be the basis or foundation of an independent suit, separate from the ownership of the bonds. I considered his coupons could never be collected by him. Those amounted, I think, to about $1,500. This added to the 14,000 which we had got back would bring the amount of the outstanding coupons then, leaving the whole of these Farwell coupons out, at a fraction less than 150,000. Accordingly, in my statement under oath, which I made in behalf of the commissioners, and which they have produced here, and also in the statement made by Eldridge, Farwell, and others, under date of September 26, based upon my affidavit, it will be found on page 48 of the State loan papers, that it is stated, "But at the most, on payment of one million of dollars and back interest of less than 150,000, possession can be had at once." At that time the outstanding coupons, including Mr. Farwell's, made a sum a fraction less than 150,000. That is the way that the sum is arrived at. Mr. Bartholomew's affidavit is under date of May 25, and this purchase of Mr. Farwell is on May 27—two days after.

Q. I want to call your attention to some evidence which has been put in there by the complainants, and also the testimony of Mr. Washburn and also General Whitney and other parties. They throw the responsibility

of these transactions upon you. I want you to explain now to the court in regard to the statement which you made to these gentlemen, and to your affidavit in regard to the Sprague and Waterman debt, &c.

WITNESS, (reading.) "The claims of A. & W. Sprague, Rice, Waterman & Tillinghast, and Francis M. Andrews being all paid and taken up in the interest of the company, the Boston, Hartford & Erie Railroad, since the presentation of the claim," &c.

Q. You can explain in regard to all those statements made by you in regard to the claims against that company, "believed to be valid to less than $6,000," on page 47. Explain in regard to those statements.

A. It has already been put into the case. I shall be obliged to go back now to that contract of the 28th of August, 1863. There is a section which provides that 9,620 shares of Boston, Hartford & Erie stock shall be put into the hands of Mr. Bartholomew and others, in trust, to remain there until the 1st day of April, 1866, upon this condition, that every claim against the Fishkill Railroad Company which shall be settled by judgment, by a judgment at law or equity, or which shall be agreed to as just by the Boston, Hartford & Erie, shall have the right to go and take up shares of that stock for the claim, and that that claim when received by these trustees shall be assigned in blank and held by them, and shall pass from them to the corporation, so far as they shall have the power to make the transfer. Now the reason of having it in that form was this: We made a public declaration when the charter was obtained that we would pay fifty cents on the dollar for all out-
198 standing claims of that corporation, they being then practically worth nothing. That was part of the public statement we made. That, at fifty cents on a dollar, would give a party a share of Boston, Hartford & Erie stock at $12.50. Immediately after that the railroad company assigned to Mr. Crane and others, or to their assignees, the right to go and buy these claims. That right passed round into George M. Bartholomew; and as his agent I bought pretty much all those claims at an average of about fifty cents on a dollar. Without going into particulars, although some of them are interesting as historical facts, but do not help this case any, I bought up large amounts, Mr. Bartholomew having them in his name. By the way, he got control of this operation by an executory contract of Crane and others. He spoke when he was here the other day, of having bought that claim. I called his attention to the error, but he did not correct it. He holds an executory contract, and I suppose to-day holds a petition in insolvency against the Providence, Hartford & Fishkill Railroad. I suppose to-day he has an executory contract, by which he controls the case; because by the law of Connecticut you cannot sell a lawsuit; you cannot sell your claim and have the title to the note or claim pass to a party, and then have the lawsuit remain; so that, to control that, Mr. Bartholomew took an executory contract.

Q. What claim is that?

A. That is the claim of Hungerford & Cone. And he also took an assignment of the late chief justice of the State, who had joined in that petition, Mr. McCurdy. We intended to put the screw on to Sprague a little, but it didn't work; but the case has been kept alive from that time to this, but I have no knowledge of it other than that an executory contract is executed in Mr. Bartholomew's name. I bought up those claims, and had assignments to Mr. Bartholomew. It was not for any other purpose than that he might go and get eight shares of stock for every dollar that he put out. That was the idea when we bought at fifty cents. He took his claim in full, principal and interest. He would

go and buy a claim with one hand, and turn right about and take eight shares out with the other. My justification for stating it is, that Mr. Currey put it in the other day, and I saw he had made a very large mistake about it and was leaving an impression, which I know to be incorrect, that these were taken up in that form that the title might go to the railroad in the hands of a third party. This mode and form of arriving at this trust went on in that condition until 1866. In April, 1866, there was remaining of this trust, "stock debt," as it seems to have got the name here, seven thousand and some odd hundreds of shares of of stock. There was this Sprague claim outstanding, there was a note of Sumner's in Hartford outstanding, and a few little matters were outstanding, and I called for that stock. Finally a bill was brought in Connecticut to settle that trust. Pending that bill came up this question of buying this Sprague claim on the part of Mr. Farwell. Mr. Eldridge—who then had the power by vote of arranging all the stock transactions of the corporation and settling all its liabilities—it was expressed by Mr. Eldridge and myself to Mr. Farwell, "Now you go and buy that claim. We pledge you that the stock in the hands of Bartholomew shall be kept as a sacred fund, and that the avails of that stock shall go to buy your claims in Rhode Island and reimburse you."

199 That was stated to Mr. Farwell before I went to Rhode Island, and the claim was bought under that agreement, that that stock should stand. The next thing showing the carrying out of that contract will be found in the statement to the commissioners. It will there be found that we represent that the corporation is in possession of 50,000 shares of stock, and that that stock is worth, and they have been offered for it, a million dollars. I have the original offer in my possession by Mr. Farwell and Mr. Healy, made in the early days of Septem ber, 1868, and in that 50,000 shares no notice was taken of those 7,000 shares. The 7,000 shares were kept from the time that Mr. Farwell was promised in May, 1868, that they should be kept a fund reserved for him, and they were no longer counted in the assets of the corporation. They were from that time forward in all the statements I had to make kept separate, and that agreement was the basis of sundry statements which I have made. The statement which I make to the commissioners here is, that these claims are paid and taken up in the interest of the company. That is this, that those 7,000 shares of stock and those 84,000 coupons are not taken notice of at all in the assets of the corporation. They have both stood, and are treated by us throughout all these transactions, as a fund set apart and dedicated to pay these Sprague, Tillinghast & Andrews claims, and therefore I say they are paid and taken up in the interest of the company, and this fund is set aside to protect the party who has taken up those claims. I should have been very glad to have counted those coupons as up, because I was seeking every dollar that I could make our funds bear, whereas here was 7,000 shares of stock and 84,000 of coupons that, inasmuch as they had not been got up, I was obliged to let stand outside and apart from the assets of the corporation. And so it was treated by us. That is the ground upon which I made the statement that there was enough set apart. And there was enough at that time, as I shall show you—more than enough to pay, counting the coupons as against the property, and counting the stock set apart to pay the debt. There was a large margin which would eventually go to the company.

Q. And the statement you made to the commissioners and which they made was true?

A. Yes, sir; I don't care to put it in such a form as that; I state the facts.

Q. You think the fund, then, was sufficient to meet the liabilities?

A. I know it was; because at the time I made that statement to the commissioners, which was September 19, 1868, at that time that stock was worth $20 a share; that was then in the hands of Bartholomew. At that very time it would have been a safe statement, financially, to have assumed that a large proportion of those coupons would go back to the corporation, but I dared not assume it, because I could not tell when I should get this stock from Mr. Bartholomew what it would bring; so I left the coupons and the stock as outstanding to protect Mr. Farwell, and took no notice of it at all. It is not counted in the assets at all. It passed along, (for there is another transaction which it is necessary for me to explain in justification of myself,) and I went forward and attended to the bill in equity in Connecticut which had been brought by these trustees for settling their accounts—a friendly
200 bill—and in October, I think, there was an arrangement made between Mr. Bartholomew, those trustees, and myself, by which (Sumner was then a party to this suit) I bought Sumner's note, which he had for two or three thousand dollars balance. He had a ten-thousand dollar note, but this was the balance, and got up these coupons and his note and paid Mr. Bartholomew and his co-trustee to their satisfaction for their services; and then a decree was passed, and in pursuance of that decree Mr. Bartholomew transferred the stock as he has stated. There had been a committee at his suggestion appointed by the corporation to receive the stock, Eldridge, Farwell, and Converse; and the stock was passed by Bartholomew to these parties. Soon after that Mr. Farwell came to my room one day, (I am about to state a transaction between the president, Mr. Farwell, and myself in reference to this stock.) Mr. Farwell came in first, and then Mr. Eldridge came in. Mr. Farwell claimed that the stock which had been got over, that that stock I had agreed, he said, and Mr. Eldridge, should go to reimburse him for his Rhode Island advances. At once both Mr. Eldridge and myself recognized the agreement. I said, "It is a good time to sell it. The stock should be sold, Mr. Farwell, and you ought to have that money. It is a good time; the stock is worth about $26 a share." It had gone up then, and I considered there was about $40,000, or in that vicinity, more funds in the stock than enough to reimburse Mr. Farwell handsomely, principal and interest; so I said, "The stock ought to be sold, Mr. Farwell." Mr. Farwell objected to its being put on the market. He said he did not think it was a good time to sell it; it was too much to put on the market. He thought it was going higher, and he said, "I think I ought to have the stock, Mr. Eldridge."

Q. You mean transferred to him?

A. That is all I can remember about it. Mr. Farwell objected to selling the stock. He said, "I don't think it is right to put so much stock on the market; and not only that, I think the stock will bring more; but I think I ought to have that stock;" and he and Mr. Eldridge went out of my room, and that is all I can remember about the transaction. They did not come to any agreement what should be done with the stock, how it should be arranged, or anything about it, but they left the room and went out, and that is all I personally know about the matter from that hour to this.

Q. You don't know what the final arrangement was?

A. No, sir; if I tell you anything more I could only tell you what I

heard, but not what I know. Neither of these gentlemen ever spoke to me upon the subject of this stock again until late last spring.

Cross-examination:

Q. Were you in the employment of the receivers of the Boston, Hartford & Erie Railroad? And if so, from what time to what time, and at what salary?

A. The price was very small compared with what other lawyers get; it was $500 a month to do nothing, and from some time in the fall to the 1st of May.

201 Q. Did you commence proceedings, acting as the attorney of the receivers, against Farwell in Connecticut?

A. I did. Nothing to do with this matter.

Q. After you left the service of the receivers did you go into the service of Mr. Farwell?

A. After the receivers had requested that they might dismiss me, and did dismiss me, I was employed by Mr. Farwell.

Q. In the same suit in which you had been employed in Connecticut—which you had brought in Connecticut for the receivers?

A. Yes, sir.

Q. You appeared on the other side for Mr. Farwell?

A. Yes, sir.

Q. Are you appearing there for him now?

A. I am, sir; not that suit, because it has been discontinued.

Q. When were you, after May 1, when you say you ceased to act for the receivers, retained by Mr. Farwell?

A. I should think the very day after my time ceased with the receivers. Mr. Farwell had been desirous of retaining me before, and had asked me to be retained.

Q. You received a retainer from him, and have been acting for him since up to this time?

A. Yes, sir.

Q. Including this matter?

A. Yes, sir. Although I declined to act as a lawyer in this matter, I said if I had got to be a witness I should take no part in the management of the case, or no part at all; but I have not hesitated to be conferred with by him in regard to the facts in the case.

Q. You have been active in getting up this defence?

A. No, sir; I have not.

Q. Haven't you had anything to do with getting up the defence of this case?

A. Not if you mean doing anything more than sitting in my office and when gentlemen came to confer with me about it to answer them.

Q. You have not advised with the counsel?

A. I say that I have; but if you mean by being active, going outside and getting testimony, or drawing papers, or anything of that sort, I have not.

Q. You have advised and assisted in the management of this case?

A. I am counsel for Mr. Farwell, and of course I am ready to consult with him when he calls at my office upon any matter.

Q. My question is, whether you have or have not advised and managed in the defence of this case?

A. It depends upon what you mean by "managed." I have
202 not managed in the way I regard the word as affecting a lawyer, as directing and controlling and appearing in court, making papers, &c. I have not done anything of that sort.

Q. Prior to your leaving the service of the receivers, didn't you urge upon the receivers to commence this very suit?

A. I did. I will give you the reasons if you will let me.

Q. I will ask you some further questions about it. At various times you urged them to commence this suit against Farwell?

A. I did. When you say "pressed," I advised them that it was their duty to do so.

Q. Did you state the facts upon which the proceedings should be based?

A. I have no doubt I did.

Q. Do you recollect a conversation you had with Mr. Bartholomew and myself at your office in regard to the facts which would sustain this proceeding against Mr. Farwell?

A. I have no doubt I did, sir.

Q. Did you state in that conversation that these Providence claims were all bought to be extinguished?

A. No, sir; not to be extinguished otherwise than as I have stated here. I explained to you how they were extinguished.

Q. How were they extinguished?

A. I stated to you the very interview, which I have stated here, in which Mr. Eldridge and Mr. Farwell came to my room, and that they went out, and that from that time forward I had always considered that Mr. Farwell had that stock, and that the stock was then worth $190,000, and that I supposed, and had supposed from that time to the present, that in that way the company had extinguished this debt. That is what I stated to you, and I then believed it.

Q. You then believed the company had extinguished the debt?

A. Yes, sir.

Q. Did you state also that the coupons which were held as security by the Spragues upon the payment of the principal debt being paid became worthless?

A. I did; that is, if you mean by the word worthless that they became worthless as an outstanding claim in Farwell's hands, and would become the property of the Boston, Hartford & Erie. In one event they would be worthless in their hands, and in another event they would not.

Q. Did you state the event in which they would not become worthless, and will you state it now?

A. Of course, if the Boston, Hartford & Erie took up this claim, and if there should be a foreclosure upon that property, then they would have the right to put in these coupons and take their share of dividends; but that was a contingency we never looked at, because that would be to give up the whole property, which is now worth six millions,
203 whereas the outstanding liabilities are only a little over two. Therefore when the debt was paid I considered the coupons extinguished, because the Boston, Hartford & Erie would want them extinguished to protect their property.

Q. Didn't you say the debt of the Spragues had been paid?

A. I have no doubt I did.

Q. And then didn't you say upon the payment of the debt these coupons became worthless?

A. I have no recollection of using that language. If I used that language it would be with the force that I now tell you. Of course, in the hands of the Boston, Hartford & Erie, or in the hands of Mr. Farwell, they would be uncollectable, because they would become the property of the Boston, Hartford & Erie upon the extinguishment of that debt.

Then they would be worthless in the hands of a stranger. I might have used that language, although I have no remembrance of using it; but I should say it to-day as applied to the coupons in the hands of a third party. I should say that thing to-day, sir; but I should not say it if the coupons were in the hands of the Boston, Hartford & Erie and there should be a foreclosure. I may have used the language loosely, but have no recollection. If I did, Mr. Bartholomew understood what I meant just as well as I did.

Q. Did you state that 500 of the Providence city coupons, six per cent., were to have been exchanged for an equal amount of Providence, Hartford & Fishkill Railroad Company's seven per cent.?

A. I don't remember. I should state it, and state it to-day. I should say to you to-day that the understanding between the parties was, that the Fishkill road was to pay in 5,000 every year, and they were to take the city coupons and carry them over to the city, and receive their own. That is the legal effect of the contract. I have no recollection of stating it.

Q. Did you state that Mr. Farwell exchanged the coupons of the city of Hartford for coupons of the Providence, Hartford & Fishkill Railroad Company, acting for the Boston, Hartford & Erie Railroad Company?

A. Never.

Q. You are sure you did not?

A. I am. I am not apt to state what I do not know. Mr. Bartholomew very likely may have made that statement, but not I, because I have no knowledge of it at all. I was not present and don't know anything about it.

Q. You say you did not say anything about that?

A. I am sure I never said so.

Q. Did you say that Mr. Farwell took the 7,349 shares of stock at a fixed price in payment of the amount advanced by him, leaving him in debt about $20,000 to the Boston, Hartford & Erie Railroad Company?

A. Never; because if I had made a statement at that time it
204 would have left him in debt $40,000. The stock was worth $192,000 on that day, and, as I have stated to you, I have never stated that there was any fixed price, or had any talk about it. I told you distinctly that those men went out of my room and I never knew what took place, but always understood the stock went to Farwell; and if it went to Farwell it must have gone to him in payment, I had no doubt.

Q. You say if it went to him it must have gone to him in payment, you have no doubt. You supposed it was so at that time?

A. Yes, sir, I supposed so up to last May.

Q. Did you say anything about leaving him in debt in any sum; if not $20,000, any sum?

A. If I had stated to you it was taken at a fixed price, why, of course, by taking that fixed price and multiplying by the number of shares it would have produced the amount. Then I must have gone further and seen the account made up of interest, commission, and all that—a thing which I never presumed to talk to you about at all. I always told the receivers I never knew what took place outside of the room.

Q. Did you say anything about a fixed price?

A. No, sir.

Q. You are sure?

A. I am.

Q. Did you refer us to the State loan paper, and state that Mr. Far-

well had stated that all the debts had been paid of the Boston, Hartford & Erie Railroad except $6,000?

A. No, sir. I referred you to my speech at the state-house.

Q. I asked if you referred to this State loan paper, and stated that Mr. Farwell had there stated that the debts had all been paid except $6,000.

A. No, sir. I did not, because I knew perfectly well——

Q. Did you refer to this State loan paper at all?

A. I don't remember that I did at all. I might have done so, but if I did it was in reference to my own statement there; how I understood it; that the matter had been adjusted; that the stock had been set aside. Then I told you in December these men came there, and I understood that firm had got that stock, and I had no doubt from that time forward that Farwell was paid.

Q. Did you state to these gentlemen and myself then that the transfer of this stock had been made to Mr. Farwell to pay back the money advanced by him to buy the Sprague claim and other claims?

A. All I told you was, that they went out, and I understood Mr. Farwell had the stock, and of course he had enough to pay him, and largely more than enough to pay him, and I had no doubt the thing was then adjusted. That is what I told you. I acted upon what I supposed men under such circumstances would do, as Mr. Farwell was looking for his money, and the stock was worth enough to pay him, and I
205 supposed these men went out to adjust it, as Mr. Eldridge had the power to adjust it; but neither of them ever spoke to me on the subject from that time down, but it was a subject of conversation between other directors and myself.

Q. You say you referred us to your opening statement?

A. I did, sir.

Q. I refer to *to* the opening statement on behalf of the petitioners, by Thomas E. Graves, before a committee of the legislature of Massachusetts. It reads in this way, (page 43:)

"Mr. MORTON, (one of the committee.) What was the amount of those bonds?

"Mr. GRAVES. $2,055,000, with a sinking-fund now amounting to $240,000.

"Mr. ALLEN. With how much interest outstanding?

"Mr. GRAVES. Perhaps there may be thirty to forty thousand dollars of interest due; all the rest has been taken up. If I were asked why that interest has not been taken up, I should simply say that that is interest which accrued in 1857. And, by the terms of that mortgage, if the trustees had paid that interest, they would have been obliged to yield possession of the road many years ago; and I have learned that people who have warm nests never get out of them unless they can get into another just as warm. So they did not pay the longest-due interest, as the Berdell mortgage requires shall be done in such case if any question ever arises under it.

"Mr. ALLEN. There was $170,000 due in the fall of 1868. What has become of that?

"Mr. GRAVES. I will explain that. There was a debt due A. & W. Sprague, of Providence, of $130,000 or more, with some interest. They had as collateral on that some $94,000 coupons of the corporation. That debt we paid, and we have the coupons in our office. Others of those coupons have been taken up by parties in Hartford, and there is now only a very small amount of these coupons out. We have worked the best we knew, whenever we have had a chance to relieve the property

a dollar, and by and by we shall ask you to remember that fact. We paid about $150,000 in Rhode Island to wipe out the Hartford, Providence & Fishkill debts, and had stock set over against it; thus getting that floating interest out of the way."

Q. Did you make that statement?

A. I did, sir.

Q. This statement was made March 10, 1870?

A. Yes, sir.

Q. At that time, more than a year ago, a year and a half ago, would you not recollect the facts about as well as you do now?

A. I recollected then just as I do now. You will notice the last line that you read: "We paid about $150,000 in Rhode Island to wipe out the Hartford, Providence & Fishkill debts, and had stock set over against it." That goes back to the first transaction, when this 7,000 shares of stock was set over against this $144,000 which Mr. Farwell paid, and that stock and those coupons were out. That was the
206 beginning of the transaction. Then it went on, as I have already explained to you, until that stock came into the hands of the corporation in November, 1868. In November, 1868, I have already explained that Mr. Eldridge and Farwell went out of my room, and there was stock enough then to have saved every coupon and to have paid Mr. Farwell well and left about $40,000, if the stock had been sold; but they both agreed that the stock was going higher. Mr. Farwell acted as though he did not want to take anything out of the corporation, but still he thought he ought to have the stock in some way, but that the stock should not be sold that day. They went out as I told you; and from that time down until I made this statement publicly Mr. Farwell had never said a word to me about the Rhode Island liability. Mr. Eldridge had never said a word to me about the Rhode Island liability, and I had assumed that Mr. Farwell had got that stock, and that it had been sold, and that Farwell had been paid and these coupons were then in the hands of the corporation. But to-day I should not make the statement. I believed it then; but, as I told you last May, Mr. Farwell and Mr. Eldridge told me that was not true, and thus I found myself acting under a delusion for a whole year and a half. I acted honestly. I should never have made this statement to the legislature if I had not believed it to be true; but, like a thousand other men, I assumed the thing from what ought to be done that it was done. If anybody is to blame, it is the officers of the corporation if they knew this and let me make the statement and did not correct me.

Q. Mr. Farwell was sitting there when you made it?

A. No, sir, he was not there. He gave me a blowing up the next day for certain things he had heard I had said; therefore I don't think he was there.

Q. Did Mr. Farwell state to that committee that your statement was wrong on that point?

A. No, sir. I don't know that he knew what I said there.

Q. Was not that pamphlet published about that time?

A. Yes, sir.

Q. Was not Mr. Farwell there during that hearing for two or three weeks?

A. Yes, sir.

Q. "That debt we paid, and we have the coupons in our office." What did you mean by that?

A. I had then no doubt it was true.

Q. Where were the coupons?

A. I don't know. I supposed when we paid the debt they were in our office; that is, in our possession. I so judged the fact to be. I stated it as very many other lawyers state things they suppose to exist of their clients, and afterward we find that we have rather overstated the thing.

Q. This thing was within your personal knowledge?

A. No, sir.

207 Q. Didn't you know how the Sprague debt was taken up, and all about it?

A. Yes, sir; what we had set apart to meet the debt from.

Q. When was the stock set over against it?

A. From the time that Mr. Farwell bought that claim in Rhode Island.

Q. Over against what?

A. Over against the Sprague debt, by the agreement of the president of the corporation; and I have no doubt a bill in equity would have taken it out of our hands if we had attempted to sell it.

Q. Was the Sprague debt paid or not?

A. If you come down strictly to the question of absolutely wiping out, it was not paid.

Q. Was that paid or not?

A. I do not propose to be made a fool of by answering a question in a categorical way when it would make me one. It was as if I owed a man in New York a thousand dollars, and should give him my check, and I should say to the next man I met, "I have paid that debt." I should not strictly speak correctly, but I should practically speak correctly. I knew there was 7,300 shares of stock set apart, and 84,000 of coupons, and that the stock when Mr. Farwell took it was worth 25. I knew that debt was taken care of, and, as you notice my language to the commissioner, it is "taken up in the interest of the Boston, Hartford & Erie."

Q. What did you mean by saying it was paid?

A. I say it is paid when I have put against a thing property which the party has a right to control to pay it. I consider the thing as done which may be done by the party. Perhaps strictly I should have gone into a longer explanation, but yet, as far as that question was concerned, there was in my judgment then $50,000 in the hands of Mr. Farwell, or set apart, more than enough to pay the whole of his debt at any time from the time that that was taken up in 1868 down to the time I supposed it was finally extinguished in 1868.

Q. Didn't you mean to have the commissioners understand that that debt was paid?

A. I meant to have them understand that that debt was so far out of the way that it never can or will come against the property.

Q. Hasn't it come against the property?

A. I don't know. If these people so managed with these funds that they have prevented it, I don't feel to blame for it. I treated the thing honestly and fairly. At the time I stated it, I stated it honestly, that there was enough. Now, if the officers of the company have put them into Farwell's hands in trust, and they have let the funds go down so that the stock is selling at 5 when it could be sold at 26, that is not my funeral; I don't propose to march as a mourner in such a case.

Q. Didn't you mean to have the commissioners understand that that debt was paid?

A. I meant to have them understand it was taken up. As to giving a categorical answer, I don't propose to. I have explained it so any man of ordinary sense can understand it.

208 Q. Whether or not you meant to have these commissioners

understand that these debts had been paid and got out of the way?

A. I shall not answer you yes or no, unless ordered by the master, because it does not leave the matter in a proper way. In answer to the latter part of the question I am prepared to answer that I did mean that they should understand it was got out of the way and should not come against the property. If you ask me if I meant absolutely paid and discharged and a receipt given for it, no; and if I had I should not have used the language I did then. There is a meaning to the language I used, I used it carefully, that that claim had been taken up in the interest of the railroad company.

Q. You swore in your direct examination that this claim was not taken up in the interest of the corporation; that Mr. Farwell went there and bought it and had it transferred to himself as purchaser.

A. That is right; but it was in the interest of the company.

Q. How?

A. Wonderfully in the interest of the company; because, in the first place, it took the attachment off from their property.

Q. (By the master.) You mean something more than that by "in the interest of the company?"

A. Yes, sir, I do; but he asked me how it could be in the interest of the company. I mean by "taken up in the interest of the company" that the corporation had furnished or pledged to this party certain things with which he went and took up the claim, and that he holds it for the interest of the company.

Q. Here is another paper in your handwriting, which has been put into this case, which preceded your affidavit. It is said that this paper M was first furnished by you to the commissioners, and that they required an affidavit, and that you subsequently made the affidavit. At the end of this paper is this:

W. N. Tillinghast is paid.
F. M. Andrews "
A. & W. Sprague "

What did you mean when you gave that to the commissioners?

A. I meant the same thing.

Q. You didn't put any qualification to it?

A. I presume not. I don't know when I made this paper; whether it was before or afterwards, or to be furnished to them.

Q. There is an examination of all the claims, then?

A. I don't know; I can't tell. The very first claim here is S. Dillon and others for $37,450 and interest. Boston, Hartford & Erie is not liable for any indebtedness of the Boston & New York Central. I beg you to notice how much reliance can be placed upon lawyers'
209 opinions sometimes. "It is a purchase of its property through the Midland, and not of its franchise, and so far as known no one has seriously made any claim that this company was so holden; and sure it is that no such debt has been paid or acknowledged." Within a few months after that——

Q. It is not of any importance whether you gave a correct opinion or not. I am not to be diverted from my question.

A. We were obliged to pay, by the governor, $25,000 on that claim.

Q. On the 5th page of your affidavit, after this statement of the claims of Tillinghast, Andrews, and Sprague, follows this: "I do not believe the Boston, Hartford & Erie liable to pay any money on the claims."

A. That is correct.

Q. How do you explain it?

A. That is correct, literally. The Boston, Hartford & Erie are in no way liable if they have a mind to let this property go. They would not be liable on the Sprague claim any time.

Q. What property?

A. The Fishkill road.

Q. Was it not the purpose of the commissioners to find out what liability it was subject to?

A. Yes, sir.

Q. And now you say it was not to be paid by the Boston, Hartford & Erie, provided they let that go?

A. Yes, sir. I don't want to put this on any such ground as that. I have told you the ground upon which I put this whole matter, that that claim was substantially paid because we had paid out against it a sufficiency to meet it and have a very large margin, and therefore, having taken no account of it, not giving the corporation any credit for the 7,000 shares of stock or 84,000 coupons, it left the thing all honest and secure.

Q. You say there was no debt out against the corporation upon any of these claims; they are not obliged to pay anything on any of these claims? And you say the reason why you so swore was, not because the claims had been paid, but because there had been collateral security placed against the claims?

A. Yes, sir.

Q. You swear they are not liable to pay anything on the claims?

A. Yes, sir.

Q. Had this stock been transferred to Mr. Farwell at the time you made this affidavit?

A. No, sir.

Q. What do you mean by saying "been pledged?"

A. I mean that Mr. Eldridge's word, the contract of the corporation, had been given. It was in the hands of Mr. Bartholomew, and Mr. Eldridge contracted that that stock should be a sacred fund, and I was instructed to get that stock that it might be set apart, and it was set apart by Mr. Eldridge.

210 Q. Did you know of such a contract?

A. I was present when it was made.

Q. Where is it?

A. There was no written contract.

Q. What was it?

A. I have stated it. If Mr. Farwell would go down and buy up that Providence claim. Mr. Eldridge was present and heard my report from Providence, and he says, "If you will go and buy that claim, we will do as Graves says; we will set apart that stock in Hartford. Graves shall go and get it as soon as he can, and when we get it it shall be sold, and so far as it will go you shall be reimbursed, and reasonable compensation for your services, so far as it goes, shall be paid, and you may hold the coupons for the balance until you take it up."

Q. Where was that?

A. In our office in Boston.

Q. Who was present?

A. Mr. Eldridge and Mr. Farwell. We acted upon that all the way through.

Q. Was that prior to your affidavit?

A. Yes, sir.

Q. Prior to the purchase?

A. Yes, sir.

Q. Then you told these commissioners this had been paid upon a talk that certain securities should be passed?

A. I don't call that talk merely.

Q. Upon this verbal talk that if Farwell took up this claim the stock in Bartholomew's hands should be placed against it, you made the affidavit that this claim had been paid in the interest of the corporation so that the Boston, Hartford & Erie Railroad had no liability to pay anything on it?

A. I did.

Q. Was that true?

A. It was; and I should have been very glad to have given a good many thousand dollars to have stood in Mr. Farwell's shoes, if I could have had a clear title to the collaterals and Mr. Eldridge's word to carry it out; because when Mr. Eldridge's word was given I considered it as sacred as a contract four times over.

Q. At the time you were urging the receivers to commence these proceedings——

A. I don't like the word "urging." I never urged anybody.

Q. Didn't you threaten them?

A. No, sir.

Q. At the time you were advising the commencement of this suit against Mr. Farwell did you tell the receivers that Mr. Farwell held those coupons as collateral security?

211 A. I have no doubt I did, for the reason that I went to Providence and brought back copies of the papers, and gave them to you.

Q. Did you tell myself and the other receivers who were present there, when you were advising the commencement of this suit, anything about any conversation or contract by which Mr. Farwell, upon taking up the Sprague debt, was to hold the coupons as collateral security?

A. I have no recollection of it; but there was no occasion for it, because I went to Providence and brought back and gave to you, or showed to you, the transfer of that account to Mr. Farwell, with the note of the collateral of the coupons. I showed you also a copy of my receipt, and told you I was astonished to find I gave my receipt for those coupons for Mr. Farwell to the Spragues. I told you I had forgotten it, and was astonished to find I had given it.

Q. Did you ever show me that receipt?

A. I did.

Q. Who was present?

A. I can't tell. I think nobody but you and me.

Q. Did you intimate to myself or the receivers, either of them, that there ever was any understanding that Farwell should hold those conpons as collateral security for the payment of the money advanced by him?

A. I have no doubt I did, if the subject was a subject of conversation.

Q. Then I should like to know upon what grounds you advised the receivers to commence proceedings?

A. Because I supposed, in that interview in December, I supposed the whole thing was settled up and I knew the stock, being worth 26, would produce $190,000, and would relieve the coupons, and Farwell had no business with them.

Q. If the stock had been appropriated?

A. Yes, sir. I supposed Mr. Farwell had sold it, and had been paid up.

Q. Didn't you give me the very sales he made at the time you advised the suit?

A. No, sir, never; the thing is absurd. I never heard of such thing until this moment. I don't think I gave you any paper; I might have done so. I don't remember that you had either. I don't think you did.

Q. You mean to say you showed me two papers?

A. I did, sir. I have got them. I don't think you ever had them to take them out of my office.

OCTOBER 17, 1871.

Mr. GRAVES: When we separated last night Mr. Brooks had just inquired for the original paper which I said I brought from Providence, and which he stated he had, and which I stated I had. I now produce that paper which he had not, and never has had except to read. That is a copy of the assignment of the account from Sprague to Far-
212 well. That is the copy which I stated I showed Mr. Brooks at the time I showed him the other paper, in my office, and which he said I gave to him, and he did not see the other, and which I stated he had not and I had. It has never been out of my hands from that time to this. Whatever passed between the receivers and myself while I was their counsel, either by papers or in consultation, I deemed their property, and have never communicated to Mr. Farwell or his counsel. This interview which Mr. Brooks has inquired about has never been communicated by me to Mr. Farwell or his counsel, but I think it now my duty to say a word by way of explanation. Mr. Brooks inquired for part of that conversation, and put the question to me about the time we adjourned, which I wish to answer now more fully. I have reflected upon it. I did not intend, in any part of this case, to disclose anywhere what took place at that interview, but what I now wish to say is in explanation of the question Mr. Brooks put to me. Mr. Brooks asked me if I stated, in that interview when Mr. Bartholomew, Converse, and himself were present, any price in regard to this stock. I said no. What was said about that stock was this: I stated to those gentlemen, in substance as I have stated here, up to the time of Mr. Farwell and Eldridge leaving the room. I then turned to Mr. Converse and said, "Mr. Converse, you know what took place between Mr. Farwell, Mr. Eldridge, and yourself, for you made the assignment, and you know what the arrangement was." Mr. Converse then said, "I understand that the title to that stock was given to Mr. Farwell to pay himself with." "Mr. Converse, was there any price?" "No; but I supposed that after Mr. Farwell had paid himself with the stock, that the balance would go to the company." I said then, "That stock was worth 25 or 26, and if worth 26, it would produce over $190,000, and there should be $40,000 or $50,000." Then I said, "Now, gentlemen, putting it the strongest that it can be put against you, my judgment is, if Mr. Farwell took the title to it under an express or implied agreement to dispose of it, and has neglected to dispose of it, and it has fallen upon his hands, and if, at the time he took it, it was worth enough to pay with, I think that equity will hold him to deliver up these coupons. I don't think he has any equitable title to the coupons." During the time I was counsel for them, that was the ground upon which I put it distinctly, Mr. Converse being the only party from whom I could derive any understanding, because Mr. Eldridge and Mr. Farwell at that time had not communicated to me upon the subject, and my knowledge only went up to the time of the parties leaving the room. I should not have stated this except the gentlemen have gone into an examination of what I always supposed to be confidential, a lawyer's interviews with his clients.

Q. What you have been talking about now is what occurred at the conversation between you and Mr. Bartholomew and Converse and myself?

A. Yes, sir; so far forth as anything that I said then, or anything that Mr. Converse said.

Q. Do you say the statement you have made now was made in my presence?

A. I do, sir. The statement in regard to those two papers which
213 I have made, was not made then, but made to you in that subsequent interview. At the first interview it was agreed that I should go to Providence and examine the papers, the assignment to Mr. Farwell, or whatever it was. I went down. Upon my return you came to my office, and then I showed you the papers and told you I was astonished to find that I had given a receipt for Mr. Farwell. It was contrary to my recollection up to that time; but on finding the paper it came fresh to my mind, and I then stated it to you.

Q. You say this paper you produce here was a copy you got down at Providence?

A. I did.

Q. Did you give me a copy of it?

A. I have no recollection of it. It may be so, sir.

Q. Did you show me any other paper besides that?

A. I did. I had the two papers; brought them from Providence, and showed them to you.

Q. From whom did you get the copy of the other paper?

A. From Mr. Green.

Q. Where?

A. At Rhode Island.

Q. What was the date of your getting it?

A. It was in March; I don't remember the day.

Q. Is there any way of fixing that date?

A. Yes, sir, I think there is.

Q. March of what year?

A. This last year. I think by going to my office, I can find upon my books, undoubtedly, the charge made to the receivers of my expenses upon that journey. If you have got my bills, they will state the exact date I went to Providence for that purpose. If you have my bill for the March, you will undoubtedly find the entry there. If you desire, I will look on my own books, and give you the exact date, whether March or April. I think it was March.

Q. You don't know what part of March?

A. I do not. I may be mistaken in March; it may be early in April.

Q. You ceased to be counsel the 1st of May?

A. Yes, sir; by an amicable arrangement between them and me. There was no breaking off on either side.

Q. You said you were dismissed.

A. I did not say I was dismissed, in those words.

Q. All they told you was, they wished to have the contract for employment by the month cease, and have you go on in the cases like the other lawyers employed?

A. No, sir. Mr. Converse came to me and said—(this is important if it is left in that form, because it looks as if there was something wrong between us)—Mr. Converse came to me and said he didn't know
214 but fault would be found with them for paying me so much while I was doing so little. I said I thought there should be. I thought they had done wrong in paying me $500 a month to do so little.

Mr. Converse then says, "We would like to have you give up the employment by the month, and if we can make an arrangement to put you into cases, we should be glad to." I said, "Mr. Converse, I am satisfied that cannot be done; because if you were going to give me a large amount of work to do you would give it now, under this price; and I will not agree to hold myself to go on for you as other lawyers do, because I can make a great deal more money to be out of your employ than in your employ. I have parties who desire to retain me in matters that may come in conflict with you. We will consider on the first day of May that our connection, professional connection, is at an end. It is quite agreeable to me to have it so;" and that is all there was to it. On the first day I sent them my bill, and accepted retainers from other parties.

Q. Is that your handwriting?

A. That is my handwriting.

Q. Didn't you give that to me when you came from Providence?

A. I am sure I can't tell you. I can only say it is my handwriting. If you say I did, I should say I did.

Q. Is it not a copy of what you call the original here?

A. No, it is not, by a good deal. It is a memorandum made from that. There is a memorandum of the coupons, and then I say at the bottom, "Received by Mr. Farwell, May 27th," without giving you a copy of the receipt. Here is a copy of Spragues' assignment, giving the account, name of the estate: "Copy of Spragues' assignment of their account, and name of estate of Amasa Sprague of Providence," &c. "In consideration of one dollar." It does not go on in form. "Also surrendered to him the following coupons, held as collateral."

Q. That is a copy of the minutes made upon the Sprague assignment. All the difference between this and that is, that one minute of the coupons is put at the bottom of that certificate, and in mine at the top?

A. Very like.

Q. Is not that paper the report you made, and will you swear that you ever gave to me or showed to me any other paper than that?

A. I do. That I showed you both of those papers in my office, and obtained them both at Providence, at the same time, of Mr. Green.

Q. What is the date of this?

A. Of what?

Q. When you went down there?

A. I have told you I will go to my office and bring you the exact date, but I am not able to state it now.

Q. When you returned, did you give back to me a report at the time of your return?

215 A. Whether it was one day or two or three days after, I don't know. The first time that you called at my office I gave it to you.

Q. Is that your handwriting?

A. Portions of it are; a portion is not.

Q. What portion is not?

A. Part is in Mr. Bartholomew's handwriting, and part mine. I should think mine was down to where I double it. The upper part of it, I think, is in my handwriting. I have not read it to see what it is.

Q. "And prosecute such proceedings;" is not that the same handwriting? Read the words that are not in your handwriting.

A. I identify the paper. I think I remember the circumstances under which it was written.

Q. I will ask you if before the word "proceeding" it is not yours?

A. No, sir. There is a line interlined above that which is not mine.

Q. (Mr. Brooks, reading.) "Whereas this board of receivers are advised and informed that H. N. Farwell received from A. & W. Sprague coupons of the bonds of the Hartford, Providence & Fishkill Railroad Company, and bonds of the city of Providence, amounting on the face of the coupons to about $84,000, which coupons are the property of the Boston, Hartford & Erie Railroad Company, but are retained by said Farwell:

"Voted, that proper proceedings shall be taken to obtain from the said Farwell or any other person in whose hands said coupons or any of them may be, and the delivery of such coupons, and our counsel be authorized and requested [these words in a different handwriting] to institute and prosecute such proceeding [then comes another handwriting] and to institute and prosecute such other claims against A. G. Farwell & Company or H. N. Farwell as appear to exist." You say that is in your handwriting?

A. I say it is all in my handwriting except "our counsel be authorized and requested," and "to institute and prosecute such other claims against A. G. Farwell & Company or H. N. Farwell as may appear." Outside of that the general vote is in my handwriting. (Paper marked E[1].)

Q. Were you at the receivers' meeting at the time when that vote was drawn?

A. No, sir.

Q. Where did you draw it?

A. I don't remember. I think, I have the impression, that Mr. Bartholomew came to my office and asked me to draw a vote on that subject. Whether I drew it there or down in their room I am not able to say.

Q. Were you there at the meeting of the receivers when that vote was passed?

A. I never attended a meeting of receivers in my life when they did any business. I think that will answer broad enough.

216 Q. What was the date when you drew that?

A. I don't know; it was during the time when I was counsel. It was before the first of May. It may have been three days before or two months before.

Q. Do you recollect when the Berdell mortgage, so called, was made?

A. It was passed March 19, 1866.

Q. Providing for the issuing of $20,000,000 of bonds?

A. Yes, sir. I drew the instrument, every word of it, and I think I ought to know what it is.

Q. Were those bonds executed by the original trustees, Berdell, Gregory, and Davis?

A. Yes, sir.

Q. At what time?

A. They were a considerable time in writing them. They did not finish them for considerable time.

Q. When?

A. I can't tell. They were months in writing the names. Gregory, I think, was the last. It was a good while before they were written up. They were deposited in a safe.

Q. Some time in 1866, was it?

A. I should not be willing to state the precise time when they were finished. They were in the office, and when these gentlemen, who were trustees, all of whom were directors of the Erie Road, could get time to sign their names, they would do it, and lay them back in the safe, until

they were finally finished, and afterwards I personally settled with the trustees, when they went out. I had much to do with that matter.

Q. This was before Mr. Eldridge was appointed trustee?

A. They were signed before Mr. Eldridge was appointed trustee, and signed by all, I think. Mr. Gregory and Davis remained with Mr. Eldridge as trustees a considerable time. Mr. Berdell resigned first, and Mr. Gregory, Eldridge, and Davis remained a good while before Mr. Gregory and Eldridge resigned.

Q. What was the amount of capital stock of the Hartford & Erie Railroad Company at the time you made the affidavit on the 27th of May, 1868?

A. It would be necessary for me to examine the records to see when we created our full stock. Perhaps I can tell you in a moment. On September 13, 1867, our stock was filled to $25,000,000. Our capital was then increased to $25,000,000.

Q. How much of it had been issued on the 27th of May?

A. That I am unable to tell you.

Q. Had that $25,000,000 been issued before May 27, 1868?

A. No, sir.

Q. How large a part of it had been issued?

A. I am unable to give you the exact amount, but there was
217 then remaining in the company, upon the representation of the treasurer and other officers, more than 50,000 shares. On the 21st day of September, 1868, they had 50,000 shares. I have before me a proposition which was then laid before the directors; the directors being present having the amount of stock furnished us. I have here before me which makes me remember distinctly a communication to the directors of the company from Mr. Farwell and Mr. Healey, offering then to take their 50,000 shares of stock at $20. At that time they had that to sell.

Q. In September when this 5,000,000 was added, 50,000 shares?

A. It was not added; there was 10,000,000 added in September, 1867.

Q. That made how much?

A. It was carried from 15 to 25,000,000.

Q. Had the 15,000,000 been issued?

A. I think not.

Q. They had not only the 10,000,000, but part of the 15,000,000 at the time of the 10,000,000 increase in 1867?

A. I think there was a small balance, but how much I am not able to say.

Q. How much had they disposed of that stock up to May, 1867?

A. I have told you I am not able to say.

Q. You don't know whether they had disposed of the 10,000,000 increase?

A. I know they had not disposed of the 10,000,000, because I know we had 5,000,000 then on hand, and we had 5,000,000, of course, on the 21st of September.

Q. In November 11, 1867, how much had they on hand?

A. I am unable to tell you.

Q. Had they any?

A. We must have had, of course, because we had just increased our capital 10,000,000 in September; I judge, of course, they had some stock on hand. The books will show precisely how that was. I only get my knowledge from some of those stand-points to which we came from time to time when it became the subject of conversation before the board. I

never looked on the books or at the accounts of the corporation, either stock or cash, other than as my attention was called to a particular point for advice.

Q. (By Mr. Wiggins.) In regard to these Berdell bonds, your honor asked if anybody knew the exact time of the issue of those bonds and making the mortgage. I should like to have you state when that Berdell mortgage was made.

A. The mortgage was made in 1866. It was ratified by the legislatures during that year, 1866. Do you mean by your question when we began to put out bonds?

Q. You can answer that also. When were the first Berdell bonds issued?

A. By the terms of the mortgage, and by the terms of the legislative acts of Massachusetts especially, we were bound—I say we, the corporation, was bound to exchange those Berdell bonds, dollar for dollar flat, with any party who held bonds known as the Norfolk County,
218 Southern Midland, Boston and New York Central, Charles River and Boston, Hartford & Erie mortgage of 1864; and they began to exchange the Berdell for those bonds after the passage of the act of Massachusetts in 1867. That act passed, I think, on the 27th of June, 1867. Soon after that we began to exchange those bonds, and to do all we could to induce parties to exchange that we might get up the underlying liens; as we were bound to get the bonds from the road between Boston and Southbridge and Putnam, within a million, of course we did all we could to make the exchange. There were no Berdell bonds sold to anybody until the 5,000,000 were sold the Erie road in July, 1858. Those were the first bonds that were sold. They took the first 5,000,000 that went on to the market. When I say sold, I mean sold by the road, of course. I suppose that parties who exchanged did sell. I don't mean to say there was not any on the market. I mean those the corporation sold. Those were the first the corporation sold. Those were then delivered in New York, the trustees being present. The trustees furnished the bonds, and they were passed over.

Q. When were they sold to the Erie Railroad?

A. I have the impression the whole was done in a day or two.

Q. (By Mr. Brooks.) Was the whole amount which was applied and exchanged for the bonds secured by the underlying mortgages, $5,963,000?

A. I am unable to say.

Q. Was it less than 6,000,000?

A. I am unable to say, but undoubtedly those papers will tell. If you will tell me who made up that paper, if it is a paper that I made, I should say it was right. I know it to be right. If it is a paper made up by the commissioners, it was made up undoubtedly from papers furnished. I know this Mr. Ashburner seemed to have got the impression that he had a communication from Mr. Farwell, but all the papers connected with titles up to the time that money was to be drawn from the State all came from my desk, and I think all furnished by me. I find in my possession now a communication from me to Mr. Ashburner. Indeed, I gave him twelve different papers connected with these titles. All those papers passed from me. Mr. Farwell had nothing to do with them.

Q. Was the whole amount which was applied or applicable to the bonds secured by the underlying mortgages less than 10,000,000?

A. I am unable to tell you, except as I should have to refresh my memory from the tables which have been made up.

(Mr. Wiggins put in the report of the commissioners, dated July 31, 1868; statement of H. S. Barry, July 25, 1868; communication of the governor, September 12, 1868, and reply of September 21, 1868.)

219 *Testimony of John S. Eldridge.*

Q. (By Mr. Wiggins.) You have been in attendance here during these hearings, have you not?

A. Only a part of the time.

Q. Under a subpœna?

A. I have been subpœnaed twice.

Q. On whose subpœna have you been in attendance before to-day?

A. On the subpœna of the receivers, I suppose. To-day I have received another one from somebody else.

Q. State whether or not you were president of the Boston, Hartford & Erie Railroad in the year 1868.

A. I was elected president of the Boston, Hartford & Erie Railroad during the years 1867 and 1868.

Q. I want you to state in reference to the transaction which took place on the 10th of December, I think, 1868, between yourself, Mr. Converse and Farwell, in regard to the transfer of 7,349 shares of stock of the Boston, Hartford & Erie Railroad, to Mr. Farwell, trustee. I want you to state for what purpose that stock was transferred to him.

A. That stock was transferred, if that is the time, the 10th of December, 1868, to Mr. Farwell, as trustee, for the purpose of securing the payment of a debt which he claimed to have in his possession, then called the Sprague debt.

Q. That was the entire nature of the transfer of the stock to him?

A. It was transferred for that purpose as security.

Q. This stock we speak of is the stock that came from Mr. Bartholomew?

A. It came from Mr. Bartholomew and one or two other trustees, (I don't know which,) under an order from a court in Connecticut.

Q. Do you remember who was present at the time the transfer took place?

A. I don't know of any one in the room except Mr. Barry, Converse, and myself.

Q. Immediately preceding the time of making this transfer, had Mr. Graves been present at a conversation in regard to it?

A. In regard to the transfer of the stock?

Q. Yes, sir; for the payment of those claims.

A. I think I was in Mr. Graves' office when Mr. Farwell came in and spoke to Mr. Graves about the transfer of that stock, and I then went into the front office or Mr. Barry's office, and I think Deacon Converse came in and we went and transferred the stock.

Q. For the purpose which you have stated?

A. Transferred the stock as collateral security or as security for the Sprague debt, which he claimed was not then paid.

Q. There was no valuation of the stock; no price put on the stock at that time?

220 A. No, sir.

Q. What was the stock worth at that time on the market?

A. I don't know exactly the market-value of it. I remember the 7,000 shares came to some $30,000 or $40,000 more than the amount we understood Mr. Farwell had paid for the Sprague debt. I understood the Sprague debt to be $130,000 odd, or that he had paid that amount for it,

and that the amount of the stock if sold would bring a good deal more money, and I wanted the stock sold.

Q. What did Mr. Farwell say about it?

A. He was opposed to selling the stock at that time.

Q. What reason did he give?

A. He thought the company ought not to put it out, because it would bring more money. That was the reason he gave me.

Q. Did he say anything about expecting the stock would go still higher?

A. He thought it would be worth more than it was then, as we got along with the road. That seemed to be Mr. Farwell's view about it.

Q. State whether or not there was any money in the treasury of the Boston, Hartford & Erie Railroad in May, 1868.

A. That I can't state, because I was away most of the month of May, 1868, and I don't know.

Q. Was there to your knowledge? Do you know of any money or means which the company had?

A. I don't know of any money the company had, and I don't know but they had.

Cross-examination:

Q. (By Mr. Brooks.) You say that Mr. Farwell requested the transfer of the 7,349 shares of stock to secure the payment of the Sprague debt?

A. He wanted it for the purpose of repaying himself for the Sprague debt.

Q. For the purpose of repaying himself for the Sprague debt. Was it for the purpose of repaying what he had advanced to pay the Sprague debt?

A. I don't know as I know whether he made that distinction or not; that is, if you mean by that whether it was to pay the Sprague debt or to pay what he had advanced to pay the Sprague debt.

Q. Didn't you make a statement to me in regard to this matter?

A. Yes, sir.

Q. Didn't you state it "the proceeds to be applied to pay him what he had advanced to pay the Sprague debt?"

A. I should say that now; that would be my view about it now. I don't know that he made any distinction about that. That is the view I had about it.

221 Q. Was anything said about coupons at that time?

A. No, sir; not to my recollection.

Q. You had known something about the Sprague debt?

A. Yes, sir.

Q. At the time this was transferred, what was your understanding in regard to it?

A. I didn't know anything about it, or what shape it had assumed. I only knew that the Sprague debt was, as the expression was by Mr. Graves, taken out of the way.

Q. Did you state to me this: "I understood that Mr. Farwell had paid the Sprague debt, and had taken it out of the way?"

A. I think I did.

Q. Is that true?

A. I think so. I think, that is my impression, that Mr. Farwell had paid the Sprague debt or taken up the Sprague debt.

Q. Did you also say you supposed the coupons were held by the corporation?

A. I don't remember that. I may have said so, but I didn't know

whether they had held them or not; I had no reason to suppose either way.

Q. Did you testify before the committee of the legislature March 21, 1870?

A. Yes, sir.

Q. You were examined by Attorney-General Allen, were you not?

A. Yes, sir.

Q. I want to call your attention to what you said then:

"Mr. ALLEN. Mr. Graves said in his opening, or at some time during the hearing, that about $150,000 had been paid down there, to wipe out old debts. Do you know about that?

"A. I know something about that.

"Q. Where was that?

"A. That was a debt of the Hartford, Providence & Fishkill Road, held by the Spragues, they holding with that claim about $90,000 of the past-due coupons of the Providence, Hartford & Fishkill division of our road. Those were a part of the claim, and the balance was an indebtedness against the company which we took up.

"Q. Well, how happened you to pay that debt of the Providence, Hartford & Fishkill Railroad?

"A. In order to get the coupons up; I think the statement was made to the commissioners as part of one debt."

Q. Was that true?

A. My statement then I believe to be correct. I don't know in what way I can change it, because what I knew about it was information that I had. Mr. Graves had made his opening, and I had heard his opening statement in regard to it.

Q. Then you were asked to explain what that was, and you say it was in order to get up the coupons that you paid the debt?

222 A. I think that is true. I think that was the view I had of it, but I would like to say a word further in relation to it. I understand there is considerable before this that perhaps it is not necessary for me as a witness to go into, but for the purpose of explanation. It is this: The Spragues held claims which I supposed, if we could get up, would be the means of giving us the Providence, Hartford & Fishkill Railroad. That seemed to be desirable, to get those coupons out of the way and pay them so they would be passed over to the trustees in such a way that there would be no breach of condition. That we were desirous of doing, and my view always was, we were getting up, in this settlement of the Sprague debt, the coupons, and I supposed the Sprague debt was paid at the time. I don't know how the settlement was made; I only know the debt was supposed to be out of the way.

Q. You supposed when it was paid you should get the coupons?

A. I can say that it was so when I went up there.

Q. I don't mean that what Farwell did would give you the coupons, but when the debt was absolutely paid; your object was to get the coupons?

A. Certainly.

Q. Your understanding was, when you had paid the debt absolutely, you would have the coupons?

A. Yes, sir.

Q. You say you went down to get up that claim?

A. Yes, sir.

Q. On your own account or on the corporation account?

A. I went to get it up for the corporation; that is, we were to be se-

cured in this application of stock, &c. That was the understanding when I went up there.

Q. But you were acting for the corporation?

A. Yes, sir.

Q. (By Mr. Wiggins.) If you went down there and succeeded in getting this Sprague debt you speak of, you intended it should be in the interest of the corporation, but you were to be protected and secured by this stock?

A. I don't say that. I don't know what I should have done if I had got the coupons in my hands.

Q. That is the view you had of it, that you were to be secured by the stock?

A. That was the understanding, that the stock was to be used in paying the debts of the Hartford, Providence & Fishkill Railroad, and we went at an early day to get the stock from the hands of the trustees.

Testimony of A. E. Scott.

Q. (By Mr. Wiggins.) State whether or not you served at any time a demand and notice and copy of account on Geo. M. Bartholomew.

223 A. I did.

Q. Have you got a copy of the demand and notice and account that were served?

A. I have.

Q. When was it served?

A. The 21st day of April, 1871.

Q. How was it served?

A. By delivering to him a copy in hand at Springfield.

Q. Read the notice.

"APRIL 15, 1871.

"To the trustees of the Hartford, Providence & Fishkill Railroad Company:

"The account hereunto annexed of Messrs. A. & W. Sprague, of the city of Providence, against the Hartford, Providence & Fishkill Railroad Company, on the twenty-seventh day of May, A. D. 1868, was sold and transferred by them to me, together with the coupons of said railroad company and of the bonds of the city of Providence and of the city of Hartford, which were then due and held by them, and with the transfer of said account to me said Spragues authorized and empowered me to collect the same in their name, and to use all lawful means for that purpose.

"Now, therefore, I hereby formally demand of you the payment of said account, and notify you that upon such payment I am ready and will deliver to you, or any party authorized to receive the same, the said coupons; and I further notify you that on the twenty-fourth day of April current, or as soon thereafterwards as may be convenient to me, if said account is not paid I will proceed to collect the same by the use of such legal means as may be necessary to enforce such collection, and as I may be advised is proper.

"HENRY N. FARWELL,
"*No.* 1 *Pemberton Square, Boston, Mass.*"

"The original of which this is a true copy, together with a copy of the account referred to, was, this twenty-fourth day of April, A. D. 1871, delivered to George M. Bartholomew, at Springfield, by me.

"A. E. SCOTT."

Q. Did you compare the copy with the original?

A. I made the copy myself from the original, and compared it with the original.

Q. You served at the same time a notice on the corporation?

A. I served a notice on the corporation by delivery; the notice a copy of which I gave you.

Q. Upon whom did you serve it, and when?

A. On the 21st of April I delivered it to Henry T. Sperry, of Hartford, or I left it at his residence in Hartford.

224 Q. Who was he?

A. The president of the corporation.

Q. President or secretary?

A. I think the president. I am not sure.

Q. Read that.

"APRIL 15, 1871.

"To the Hartford, Providence & Fishkill Railroad Company:

"The account hereunto annexed of Messrs. A. & W. Sprague, of the city of Providence, against you, on the twenty-seventh day of May, A. D. 1868, was sold and transferred by them to me, together with the coupons of your bonds and of the bonds of the city of Providence and of the city of Hartford which were then due and held by them; and with the transfer of said account to me, said Spragues authorized and empowered me to collect the same in their name, and to use all lawful means for that purpose.

"Now, therefore, I hereby formally demand of you the payment of said account, and notify you that upon such payment I am ready and will deliver to you the said coupons; and I further notify you that on the twenty-fourth day of April current, or as soon thereafterwards as may be convenient to me, if said account is not paid I will proceed and collect the same by the use of such legal means as may be necessary to enforce such collection, and as I may be advised is proper.

"HENRY N. FARWELL,
"*No.* 1 *Pemberton Square, Boston, Mass.*"

"The original of which this is a true copy, together with a copy of the account annexed, was, this twenty-fourth day of April, 1871, left at the residence of Henry T. Sperry, at Hartford, by me,

"A. E. SCOTT."

The notice is dated April 15. It was served April 21, 1871. I also delivered a notice similar to that to the treasurer, as follows:

"APRIL 15, 1871.

"To the trustees of the Hartford, Providence & Fishkill Railroad Company, and said company, its secretary, and treasurer:

"The account hereunto annexed of Messrs. A. & W. Sprague, of the city of Providence, against the Hartford, Providence & Fishkill Railroad Company, on the twenty-seventh day of May, A. D. 1868, was sold and transferred by them to me, together with the coupons of the bonds of said railroad company, and of the bonds of the city of Providence and of the city of Hartford, which were then due and held by them; and with the transfer of said account to me, the said Spragues have authorized and empowered me to collect the same in their name, and to use all lawful means for that purpose.

225 "Now, therefore, I hereby formally demand of you the payment of said account, and notify you that upon such payment I am ready and willing to deliver to you, or to any party authorized to receive the same, the said coupons.

"And I further notify you, that on the twenty-fourth day of April current, or as soon thereafterwards as may be convenient to me, if said account is not paid, I will proceed to collect the same by the use of such legal means as may be necessary to enforce such collection, and as I may be advised is proper.

"HENRY N. FARWELL,
"*No.* 1 *Pemberton Square, Boston, Mass.*

"A true copy of the original, this nineteenth day of April, 1871, delivered to the treasurer of said company, at Hartford, Connecticut, by me.

"A. E. SCOTT."

Q. For whom did you serve those notices on those gentlemen?
A. Henry N. Farwell.
Q. What is your name and profession?
A. My name is A. E. Scott; profession, an attorney.

Testimony of H. N. Farwell.

Q. You are the defendant in this action?
A. Yes, sir; I am.
Q. When did you first become connected with the Hartford & Erie Railroad as a director or other officer?
A. In the fall of 1866.
Q. Were you ever vice-president of that road; and if so, from what time to about what time?
A. I think I was elected vice-president in the latter part of 1866, or the fore part of 1867, and re-elected at every annual meeting after that. I resigned in the latter part of '69, and was not director or vice-president of the corporation for a while. Afterwards I went back as director, but never as vice-president. I think not.
Q. State whether or not you are the holder, and claim to be the owner, of these coupons in suit.
A. I am the owner.
Q. Except the Providence city ones?
A. Except the Providence city ones.
Q. And the city of Hartford ones also?
226 A. The city of Hartford ones were exchanged for Providence, Hartford & Fishkill Railroad.
Q. You have the same number of bonds of the Providence, Hartford & Fishkill that you had of the city of Hartford?
A. The same number of bonds, but one per cent. different.
Q. State how and when you came into possession of the coupons; state the whole transaction to the court in the way it occurred.
A. After I was elected a director of the Boston, Hartford & Erie, it soon became apparent that we should apply for State aid from the State of Massachusetts. The debts of the Providence, Hartford & Fishkill Road I heard of frequently from the directors when they were present, and from Mr. Graves, who was counsel. I knew nothing about it. I was not a director, and never met with them during the administration of Mr. Bartholomew. I think he was president during '64–5, and part

of '66. I was not conversant with any of the affairs of the purchase of the Providence & Fishkill Road. I went in there a green hand, as it were. But I heard of the Sprague debt, and that it was very important to have it got out of the way. Mr. Bartholomew hardly ever came to Boston but he was harping on the Sprague debt. I never heard it intimated but what it was a good debt. I never heard a doubt about the commission or the interest charged in the debt. I never heard a doubt expressed about the account but what it was good. I did not hear that there was any objection to the coupons that they were held as collateral. On the contrary, it was always placed before me the amount of coupons they held as collateral. In the fall of 1867, when there was still further prospect of State aid, Mr. Currey, in his testimony, I have no doubt, stated it as accurately as I could state it. With Mr. Graves I went down to see the Spragues, and saw Governor Sprague. I think we were there two hours. I satisfied myself I could not trade with him except for money. The price was fixed at $130,000. He gave a reasonable length of time for that to be paid in. He would hold to that for a certain length of time. When I came back and reflected upon the matter, I did not see fit to advance the money. We had not got the act through the legislature, and not until about the time we got it through the legislature did I open negotiations with the Spragues for that account. I tried previous to the purchase of the account to buy it with the notes of myself and Mr. Eldridge, which was refused; they would accept nothing but money. On the 27th of May I took certified bank checks on New York banks to the amount of $135,000, and went down there and paid it to them for their account. Mr. Graves went down with me, with the distinct understanding that he should see that the papers were right, and that the transaction was carried out legally for me. I paid them $135,000 for their account. I bought the account for myself, and nobody else. There was no understanding that I was buying for anybody else.

Q. Whose money did you take down?

A. The money of A. G. Farwell & Company, and they charged it to me.

Q. It was your own money?

227 A. Yes, sir. I got discounts at the various banks that day for $150,000 odd.

Q. You took $135,000 down there in checks on New York?

A. I took one check from the Third National Bank for $50,000; one from the Atlantic Bank, $45,000; and one from the State Bank for $40,000. They preferred New York funds to Boston funds.

Q. When you got down to Providence at the time you purchased this account and paid the money, where did you go to?

A. To the office of A. & W. Sprague.

Q. State what you found there.

A. Mr. Amasa Sprague.

Q. Did they have their account there?

A. Their account there was, with this assignment, to be put on the account assigning to me, as I understood, written by Mr. Currey. I was not familiar enough with Mr. Currey's handwriting to know about that. It was so understood from Mr. Graves' instructions to Mr. Currey that Mr. Currey should have the papers fixed when we got there. Mr. Currey was not in Providence at that time, but had left this for Mr. Graves to examine.

Q. Did Mr. Graves remain as long as you did, or leave before?

A. He left before.

Q. Was the account delivered to you at that time?
A. The account was delivered to me.
Q. Were the coupons?
A. No, sir.
Q. Why not?
A. They were locked up in some safe, some vault. The day we got the account settled we did not arrive there until past midday. When we wanted the coupons they said that they could not get them very conveniently. It was understood they would be left until Mr. Graves returned and finished some papers the next day, and he would see that the coupons were delivered all right.
Q. Was there any purpose that you knew of in Mr. Graves' return the next day—whether to complete any other papers or assignments?
A. I think there were two judgments which the Spragues said must be settled at the same time, within a day or two. They rather gave me to understand they had better be paid before the coupons were delivered.
Q. State whether or not you purchased those judgments.
A. I did.
Q. And paid for them in what?
A. By a draft on A. G. Farwell & Company. I think those were paid for by A. G. Farwell & Company.
228 Q. Whose draft?
A. Mr. Graves'.
Q. When did you return?
A. On the evening of the 27th.
Q. Was Mr. Currey or not present during any part of this transaction?
A. No, sir; he was not.
Q. When did you see him first that day?
A. Between six and seven o'clock that evening. I left on the 7.10 train.
Q. State whether or not you informed him at that time in regard to the transaction—what you had done.
A. I did; that a settlement had been made with the Spragues.
Q. State when you received these coupons, if ever, and through what source.
A. I think I received the coupons on the morning of the 29th.
Q. From whom?
A. From Mr. Graves.
Q. State whether or not those coupons were examined by you or any of your clerks.
A. They were examined and counted by one clerk.
Q. And found to be correct?
A. And found to be correct.
Q. Do you know anything about any receipts having been given for these coupons by Mr. Graves? You never gave any?
A. I never gave any. I supposed the Spragues would require a receipt, and I understood that Mr. Graves gave a receipt. He said he gave a receipt in my name.
Q. Were there any coupons in Mr. Sprague's possession which were claimed to be, and which he admitted to be, the property of the Hartford & Erie Railroad?
A. When I went down to purchase the account I didn't know that they held any coupons which the Providence & Fishkill Railroad claimed as theirs. After I received the coupons I found they did not hold out

as many as on their account, and I inquired about it, and they said this $14,000 belonged to the railroad corporation, and the Spragues did not hold them as collateral. They were afterward delivered to the Boston, Hartford & Erie Railroad. I never had possession of them at all.

Q. Do you know at what time they were delivered?

A. It was months afterward. I never had them in my possession.

Q. State whether or not these coupons, from that time until the present, with the exception you have named of the city of Hartford and the city of Providence coupons, sold to Long & Company—state whether or not these coupons have ever been in any other possession than your own?

A. Never, sir.

229 Q. Never were in possession of the Boston, Hartford & Erie?

A. No, sir.

Q. Were they ever asked for or claimed?

A. Never, sir.

Q. State whether or not they have ever been claimed by the Hartford & Fishkill Railroad.

A. Never. I suppose Mr. Bartholomew and I have had conversations about that account twenty times; I don't know but forty. I never heard any doubt expressed by Mr. Bartholomew or any one else about the coupons.

Q. Or about the account?

A. Or about the account.

Q. He had knowledge that you had purchased it?

A. I had no doubt of it, sir. It was no secret kept by me. I didn't keep it secret from any one.

Q. I want to ask you the direct question whether or not in that transaction you acted for or purchased or settled or paid that Sprague claim for the Boston, Hartford & Erie Railroad Company, or for yourself.

A. If I had not been an officer and connected with a large interest in the Hartford and Erie Railroad, I presume I should have never bought the claim. But I never bought the claim for the road, or paid for it with the road's money, and never have received a dollar from the road for the claim.

Q. Explain to the court, please, why you bought it; why you got this into your hands.

A. There are two or three reasons. One reason is, that the commissioners found out that the Spragues had an attachment on the road. They did not like to make up their report with an attachment on the Providence & Fishkill Road. I remember that distinctly. They said, "You say the debts are so much on the Providence & Fishkill Road. There is an attachment, and we don't know how it may turn out. We want the attachment removed." Another reason was, that I thought it was for the advantage of the Boston, Hartford & Erie Railroad to have the account taken up and held in the interests of the friends of the road. That was one great reason. Another reason I have stated to you about the commissioners, that they didn't want an attachment on the road when they made their report. At the time this negotiation was made with the Spragues, there was some prospect and probability of the Hartford & Erie being solvent and good. At any rate I thought so, or I should not have put so much money with it as I did.

Q. I want you to state to the court whether you have ever been paid or received back a dollar of the money which you paid for it, except what arose from the sale of some stock a long time after.

A. Never, sir.

Q. At the time you purchased that claim, what was the financial condition of the Boston, Hartford & Erie Railroad, as to having available means and money?

230 A. I believe the financial condition was such that they did not keep any bank-account. I don't think they had a check-book from the time I went in there until after or about the 1st of July, 1868. I have heard it insinuated, I think I have heard it since this hearing, that there were check-books that could not be found. My recollection is, that they never had a check-book; that there was nothing in the treasury; that the treasurer never had anything in his possession worth having a check-book for. Whatever little money there was, Mr. Barry kept in a drawer. I have no recollection of ever seeing a bank-book.

Q. I want to call your attention to the transfer of some stock called debt-stock, by Mr. Bartholomew; state whether or not a certain amount of that stock, 7,349 shares, were ever transferred to you.

A. It was transferred to me as trustee.

Q. For what purpose; how came that stock to be transferred to you?

A. That stock was transferred to me as collateral security for the accounts I bought in Rhode Island against the Providence & Fishkill Railroad. It was known at the time that the money I paid, the accounts, amounted to $175,000. I paid in money about $145,000 or $146,000. The gross amount was $175,000. The transfer was familiarly known among the directors.

Q. There was no privacy or secrecy or keeping back any fact about it at the time?

A. I have no reason to suppose but that they knew it; I have no doubt they did, and that the difference between the coupons which were always considered good for the face of them; there was a vote on record of the directors, that the coupons should draw interest. I think the vote passed when Mr. Bartholomew was president of the road; and it was so placed before me that these coupons some day would be paid with interest. The difference between the coupons and the amount of money I paid was some $60,000 or $70,000.

Q. What was your object in exchanging the city of Hartford coupons for Fishkill coupons?

A. It was represented to me, and I had no doubt of the fact, that they would draw interest, and they were seven per cent. coupons instead of six per cent. coupons; so I thought I was making a good exchange, and no other reason.

Q. How came that stock to be transferred to you? Who brought it to the notice or attention of anybody?

A. I went into Mr. Graves' office, I recollect perfectly well, and commenced a conversation with him, as stated yesterday, that I wanted that stock in my name, and that the Sprague account had not been paid and was not paid, and I felt as though it ought to stand in my name.

Q. For what purpose?

A. As collateral security. I did not advocate selling the stock. I never advocated selling any of the securities of the Boston, Hartford & Erie Railroad, except the sale of the bonds of the Erie Railroad.

231 Q. Whether or not it was proposed that that stock should be sold and you paid out of the proceeds?

A. It was advocated by some that the stock had better be sold. I opposed it, because at that time we had not received one dollar of State aid. We had been at work almost twelve months with the commissioners and Governor Bullock. They had in their report taken the stock at $20 a share, and the bonds at 80. The bonds had not reached even 70,

and I didn't think it advisable to put out our securities at the market price; if the road was finished they would be worth a good deal more, and I have no doubt about it at this moment.

Q. What was the value of the stock in the early part of that year, say April or May?

A. As near as I can recollect, I think it ranged from $13 to $15.

Q. What was the value of that stock at the time it was transferred to you?

A. On the 27th of May, when the stock was purchased, was about the time the legislative act was passed granting State aid, and it might have been higher than on the fore part; my impression is, it was worth in the neighborhood of $25, the market price.

Q. If that stock had been sold it would have more than paid the Sprague debt and the Providence judgment by about $40,000?

A. Yes, sir.

Q. Who was present when the stock was transferred to you?

A. No one except Mr. Barry, that I recollect; he and Mr. Eldridge and Mr. Converse.

Q. State whether or not it was not stated at that time, in the presence and hearing of Deacon Converse, how this stock was to be transferred to you and held by you.

A. Certainly, it was stated and understood that stock was put in my name as collateral for the money I had paid out for the Providence & Fishkill debts. There was no secret about it.

Q. Have you got that stock now?

A. I have not.

Q. State how long you held it, and when you parted with it.

A. I parted with the stock in the year 1870, when I found that receivers and lawyers were going to eat up the remnants of the road pretty much, and I thought I had better sell the stock. They were talking about its going into the hands of receivers, and lawyers were thick about the court-rooms. I thought the stock ought to be sold. The stock was sold, I think, at an average of about $14 a share. I guess I got more for it than I could get since.

Q. You got whatever was the market price?

A. Yes, sir.

Q. Will you look at the paper now shown you, marked Exhibit 1, and state what it is?

A. This seems to be a statement of account and notes of A. G. Farwell & Company vs. Boston, Hartford & Erie Railroad Company.

Q. Is there any statement in that paper concerning these coupons and that Sprague debt?

232 A. We paid cash to A. & W. Sprague for their claim vs. Hartford, Providence & Fishkill Railroad Company, with their authority to collect the same $161,818 06

29th, we paid cash for Francis M. Andrews' judgment of March 9, 1867, vs. Hartford, Providence & Fishkill Railroad Company, with authority to collect 370 54

We paid cash for O. G. Waterman and Daniel Tilinghast's judgment of March 9, 1867, vs Hartford, Providence & Fishkill Railroad, with authority to collect the same 8,798 48

Making 170,987 08

Against this amount we received, as collateral, 2,123 coupons Hartford, Providence & Fishkill Railroad; 500 coupons city of Providence; 7,349 shares Boston, Hartford & Erie Railroad stock.

Q. The figures carried out there are gross amounts?

A. Gross amounts of the judgment and bills.

Q. When, if ever, was that statement given to the receivers, and how came it to be given to them?

A. There don't seem to be any date.

Q. State from your own recollection, as nearly as you can.

A. It is my impression it was in the latter part of 1870 or fore part of 1871. I know we were importuned by the receivers to give the statement.

Q. You think that was the latter part of last year or the very first part of the present year?

A. Yes, sir, that is my impression. It was before Mr. Pierce went out of office.

Mr. CLARK. Mr. Pierce resigned in December.

WITNESS. Then it must have been in December that this statement was handed in. "October 19, 1870," it seems to be filed, pencilled on the back.

Q. Between the time of the delivery of that paper and the time of the service of the notice or demand upon you for those coupons in April or May, had they ever made any claim upon you?

A. Not to my knowledge, sir.

Q. Or set up any right to them?

A. Not to my knowledge.

Q. Did they until after you had made this demand upon Mr. Bartholomew to pay them?

A. No, sir.

Q. Have you ever secreted those coupons?

A. Never, sir.

233 Q. Have you ever disposed of any Providence city coupons to Messrs. G. W. Long & Company?

A. I have.

Q. You can state that transaction.

A. When the Hartford & Erie securities went down, Mr. Long was carrying, for some friends of mine that I had guaranteed to be responsible for, securities of the Boston, Hartford & Erie Railroad, and made a loss, and I found that I had got to pay to keep my word good. I gave Mr. Watson, of the firm of G. W. Long & Company, those Providence city coupons, remarking at the time when I handed them to him, that those were good for the cash: "All you have got to do is, to go down and collect them." I so supposed. I never heard it represented any other way.

Q. You delivered those coupons to them for the purpose of disposing of them and applying the proceeds to what you were liable for or responsible for?

A. I did, sir.

Q. (By the master.) You say it was to apply on your liability. They held it?

A. Yes, sir.

George W. Long.

Q. (By Mr. Wiggins.) We observe in the report of your testimony yesterday, that in answer to an interrogatory from counsel on the other

side, "Did you give Mr. Farwell anything for the coupons?" your answer is, "I think not; I didn't." Will you explain that testimony?

A. I supposed that Mr. Brooks had reference to a receipt, or any papers. I think he asked me if any papers passed. He didn't ask me if I gave anything. He asked me if any papers passed, and I said "No." That was his question, in so many words.

Q. (By the master.) What do you say now? You received the coupons?

A. Yes, sir.

Q. For what purpose?

A. For the purpose of getting the money which Mr. Farwell owed us, which we wanted very much.

Cross-examination.

Q. (By Mr. Brooks.) You stated when you got these coupons?

A. Yes, sir. I said some time in November, 1870.

Q. And you say that you received them for the purpose of getting what Mr. Farwell owed you?

A. Yes, sir; a portion of it.

234 Q. He owed you on his liability for losses, or on his liability to you on stocks which you were carrying?

A. I don't know about that.

Q. What was the debt for?

A. It was money advanced in one way and another. I suppose he knows best himself about the losses.

Q. You don't know that it was any stock balances, or any losses on stock that you were carrying for him?

A. Well, I never asked Mr. Farwell any questions in regard to his business. I knew it was more than that amount.

Q. What was the debt?

A. The amount of money he owed us.

Q. What for?

A. Cash advanced.

Q. Solely for cash advanced?

A. I suppose it might be called that.

Q. I ask you whether it was on account of losses upon stock which you were carrying for him, or margins on stock contracts, or what was it? Can you tell?

A. I know that Mr. Farwell at that time owed us a great deal of money, a great deal more than the amount of these coupons which he gave us.

Q. You can't tell what the debt was?

A. I can't tell specifically. I can furnish it, if you wish.

Q. Can't you answer that question I put in regard to the losses on stock for which he was liable? Was there anything of that kind?

A. I have no objection to answering, if Mr. Wiggins says I shall.

Mr. WIGGINS. We don't suppose it is pertinent to the case, but the court, I suppose, would give them some latitude.

The MASTER. I think they may inquire what the debt consisted of.

A. I say it was a decline in the stock and bonds of the Boston, Hartford & Erie Railroad Company.

Q. Which you had made advances upon to Mr. Farwell, or A. G. Farwell & Company, which was it?

A. Henry N. Farwell.

Q. Henry N. Farwell alone?

A. Yes, sir.

Q. Your contracts were not with A. G. Farwell & Company, but Henry N. Farwell?

A. I cannot say positively in regard to that. The business that I have done has always been with Mr. Henry N. Farwell.

235 Q. Now, was the debt a debt of Henry N. Farwell or A. G. Farwell & Company?

A. Henry N. Farwell.

Q. You are sure of that?

A. Yes, sir.

Q. It was not a debt of A. G. Farwell & Company at all?

A. No, sir; I think not.

Q. Then this stock, which was Boston, Hartford & Erie Railroad stock, you had advanced on to Mr. Farwell?

A. Yes, sir.

Q. To what amount?

A. More than $15,000.

Q. That is, after selling the stock, there was more than $15,000 left?

A. Yes, sir.

Q. After you had sold out all the stock?

A. Yes, sir.

Q. What is the balance of the debt now?

A. More than $15,000.

Q. Which was in existence at the time this transfer was made?

A. Yes, sir.

Q. When did this debt accrue; that is, when was it that the losses occurred?

A. Well, from day to day.

Q. Up to what time?

A. You might say up to to-day.

Q. I mean the debt which existed at the time when this transfer was made?

A. Then up to that time.

Q. From day to day?

A. So to speak, yes. I have done a great deal of business for Mr. Farwell.

Q. Had you sold the stocks which you were carrying for him for the advances you had made prior to the time of the transfer of the coupons?

A. That I can't say, whether we had sold them all or not. The difference between the market price of whatever stock we might have had, was more than $15,000.

Q. Were these coupons turned over as collateral security or as an absolute sale to you?

A. As collateral security; or rather, to collect. We wanted money. Mr. Farwell owed us money, and we wanted it, and Mr. Watson told him so, and got these coupons, which Mr. Farwell told him to convert into cash and pass it to his credit.

Q. Of the debts which were existing at the time when these coupons were passed over, there remains now more than $15,000 owing?

A. Yes, sir.

236 Q. You see I fix it as the debt existing at that time; there is more than $15,000 owing at the present time?

A. Yes, sir.

Q. Unpaid?

A. Yes, sir.

Q. You were told that the coupons could be collected, and were good for the amount?

A. That is what Mr. Watson said.
Q. Did you examine the coupons?
A. No, sir.
Q. Did you undertake to collect them of the city of Providence?
A. Mr. Watson went down there for that purpose.
Q. When?
A. I think it was the day after he received them, or the next day; within a day or two at any rate; as soon as he could leave, because we wanted the money.
Q. Did you present them at Providence?
A. Mr. Watson did; the Providence papers said so, in large letters.
Q. That you presented them for payment?
A. Yes, sir; and they came down here and tried to arrest Mr. Watson for stealing, I believe, or something, I don't know what.
Q. You did not return the coupons to Mr. Farwell, on account of not being able to collect them?
A. No, sir.
Q. Did you proceed to commence a suit against the city?
A. Yes, sir.
Q. When?
A. As soon as we could. We took immediate measures for collection. These things move slowly. There was no time lost.
Q. The suit was brought some time in May, was it not?
A. Measures for the collection of the coupons were commenced immediately; there was no time lost.
Q. You found that Mr. Farwell's statement, that they would be paid on presentation, was not correct; did he tell you so?
A. He didn't tell me so, but I supposed of course they would be, being city coupons.
Q. Don't you know of any reason why they had not been collected before?
A. No, sir.
Q. You knew they were about ten years overdue?
A. Yes, sir.
Q. You didn't know any reason why they had not been collected before?
237 A. No, sir.
Q. You knew they were ten years overdue?
A. Of course; anybody can tell by looking at the date, and seeing that it is 1857, that they were overdue.
Q. There was no investigation made by you to ascertain why they had not been presented before?
A. No, sir.
Q. Had you no curiosity to find out why the coupons of the city of Providence had not been presented for ten years?
A. No, sir.
Q. Do you consider that in the ordinary course of things, that the coupons of such a city as Providence should be kept ten years without presentation?
A. They might be. I have seen cases of the kind before. I am a broker, and I don't ask questions of the people I do business for and with.
Q. You did not make any inquiries?
A. No, sir.
Q. Didn't it occur to you that it was rather a curious thing that those coupons had been standing so long without being collected?

A. It occurred to me that it was rather a curious thing that the city of Providence would not pay them when presented.

Q. It did not occur to you that it was a curious thing that they had not been presented for ten years since they matured?

A. No, sir.

Q. Mr. Watson was the man who had this talk with Mr. Farwell, not you. He received them, didn't he?

A. Yes, sir.

Q. He was present and had the talk with Farwell, didn't he?

A. Yes, sir; I suppose so.

Q. You had received large amounts of stocks, had you not, from Mr. Farwell and A. G. Farwell & Company for sale?

A. Yes, sir; and bought large amounts, too.

Q. Since December, 1868, you had bought large amounts and sold very large amounts for him?

A. Yes, sir.

Q. And for A. G. Farwell & Company?

A. Yes, sir.

Q. How extensively were A. G. Farwell & Company and Henry N. Farwell operating in stocks in December, 1868?

238 A. That I can't say.

Q. Was he not making purchases and sales through you?

A. Yes, sir.

Q. To very large amounts.

A. December, 1868—I can't say without reference to books. I wouldn't be surprised if he was.

Q. The fall and winter of '68 and '69?

A. I think so.

Q. To the amount of a million of dollars or so?

A. I should think so.

Q. Of the Boston, Hartford & Erie Railroad?

A. Yes, sir.

Q. Those operations in stocks by him continued down to how late?

A. I might say up to to-day, if I wished.

Q. Do you know what was the price of the stock of the Boston, Hartford & Erie Railroad in December, 1868?

A. I can't tell without reference to sales records.

Redirect:

Q. (By Mr. Wiggins.) You have spoken about the indebtedness of Mr. Farwell to you. I want to call your attention, to refresh your recollection, to another account which Mr. Farwell had guaranteed to you—the account of Mr. Burleigh. What was the amount of that debt—the balance due against Mr. Burleigh, which Mr. Farwell had guaranteed—as near as you can recollect in round numbers?

A. I can't tell you without reference to the books. Mr. Watson can tell you.

Q. It was a large amount?

A. Yes, sir.

Q. How long have you been personally acquainted with the firm of A. G. Farwell & Company and Henry N. Farwell?

A. I should think it was about four years—isn't it, Mr. Farwell? Say five years.

Q. State whether or not Mr. Henry N. Farwell was a man of large wealth and means, so considered in the community?

A. I always so considered him, always supposed him to be so, and a

great many of his friends and acquaintances have stated that to be the fact.

Q. His credit was not questioned during that time?

A. Not in the least; nor his word either.

Q. What particular part of the business of G. W. Long & Company do you especially attend to?

239 A. I go to the board, and buy and sell stocks principally.

Q. And Mr. Watson attends to the books and office business, doesn't he?

A. Yes, sir.

Direct examination of Henry N. Farwell resumed:

Q. (By Mr. Wiggins.) I want to ask you about the telegram which was sent down to Providence, about the closing up of the transaction, signed by H. S. Barry. I want you to state whether or not you directed Mr. Barry to send that, and why?

A. I did, because the railroad company had the privilege of using the telegraph wires free.

Q. You requested him to telegraph that?

A. Certainly I did.

Q. Whether or not that is the account and transfer you received from Mr. Sprague at the time you paid him the money with the coupons?

A. Yes, sir.

Q. You see that erasure there. What does that have reference to—the coupons which were sent down to Barry afterwards?

A. Yes, sir.

Cross-examination:

Q. (By Mr. Brooks.) You say that the 7,349 shares were transferred to you as trustee. Trustee for whom?

A. It was put in my name as trustee. I don't know why it should have been placed to me as trustee, instead of collateral. It was put to me as collateral for the amount that I paid down in Rhode Island. I can't tell why the trustee was put there in place of collateral.

Q. (By the master.) You don't know of being trustee for any other party except yourself?

A. No, sir; not at all. It was understood that the stock was not to be put upon the market.

Q. Was there any understanding what you should do with the balance, if any, after you sold the stock?

A. It was to go for the benefit of the railroad company, sir.

Q. (By Mr. Brooks.) What was the value of the shares, at that time, of this road?

A. I have not looked at the records, but I should say in the neighborhood of $25, as near as I can recollect.

Q. You held a very large amount of the stock at that time, didn't you?

A. I did, sir.

Q. How large an amount?

240 A. Well, sir, I can't tell now. I should think 50,000 shares, myself and A. G. Farwell & Company. I was advancing to the corporation, and holding their stock and giving them money as they required it along.

Q. You sold those shares, didn't you, from time to time, that you held?

A. I think when we settled with the company, the latter part of November, 1869, we held about 50,000 shares.

Q. You went on selling shares after you got these 7,349 shares, December 10, 1868, didn't you?

A. To some extent; I sold and bought. My object was to keep the price of the securities up, and have them tend up until the road was finished.

Q. You sold and bought, both, did you?

A. Yes, sir; to some extent.

Q. During the year 1869 you were buying and selling, were you not?

A. Selling only small amounts, and buying small amounts. I was not buying large amounts. We were carrying a good deal of stock for the corporation through 1869.

Q. Did you make sales of those 7,349 shares?

A. They were made by George W. Long & Company.

Q. Did they make them for you?

A. They did, at my order.

Q. How came you to sell them at the time you did?

A. Because I thought they would bring more money than they would at any time afterwards.

Q. Did you give any notice to the corporation that you were going to sell them?

A. No.

Q. Had you previously disposed of the stocks that you had of your own?

A. No, not all of them.

Q. You had mostly, hadn't you?

A. Well, I should think likely we had. I should think we had the larger amount.

Q. You sold your own shares in 1869, didn't you?

A. We sold a good many in 1869. My impression is we had over 50,000 shares in 1870. I can't be positive about it. At the time we made the settlement, I think we had over 50,000 shares, which was the latter part of November or first of December. The account shows when it was made.

Q. You bought those shares some time in 1869. That was not stock you were carrying for the corporation?

A. I never examined the stock-book of the corporation in my life. The stock was given to Mr. Ayres, as I understand it, to raise money on; and at the time the road failed I think we held about 50,000 shares of stock which we got from Mr. Ayres, which was understood to be corporation stock, and I supposed it was; I had no doubt to the contrary.

241 Q. How many shares of the stock did you buy in 1868 after December 10, and in the year 1869?

A. I don't know. I never looked over it to see.

Q. Several hundred thousand dollars, wasn't it?

A. I might have bought several hundred thousand dollars.

Q. About how much?

A. I have no idea, sir.

Q. You went on speculating in the shares of stock during that year, 1869?

A. What do you mean by speculating?

Q. Buying and selling, or buying and holding.

A. I was buying and selling.

Q. Did you give any receipt or pass any paper to the persons who

transferred these shares to you, Messrs. Eldridge, Farwell, and Converse, trustees?

A. I don't recollect that I did, excepting on the stock-book. Whenever a man took out a certificate he had to sign his name on the stock-book, and I presume my name is on the stock-book.

Q. On the stock-book for what?

A. For the certificate I took out. If it wasn't there it should have been there. I have no doubt it was there, sir.

Q. But you think you gave no paper declaring what the trust was, for what you held the stock or why you received it?

A. I don't think I did.

Q. Or any obligation for the surplus?

A. I don't think it was asked of me. I have no recollection of any such paper being called for.

Q. Who was present at the time when this transfer was made?

A. Mr. Barry—who always had charge of the stock-book when he was in the city, and, unless he was detained by sickness, always had charge of the stock-book and the issuing of certificates—Mr. Eldridge and Mr. Converse.

Q. That is all?

A. I don't know of any one else, sir.

Q. Where was it?

A. It was in the office of the Hartford & Erie Road, Mr. Barry's room, where his desk was.

Q. Had you made any claim for the payment of this money of the Boston, Hartford & Erie Railroad Company which had been advanced by you at Providence, prior to that time?

A. I had spoken of it. It was all understood that the claim should not be pressed, because we had not any money that we could use.

242 Q. Had you asked them or any of them to pay the amount which you had advanced down there prior to that time?

A. Demanded it?

Q. Yes, sir.

A. No, sir, I hadn't.

Q. Did you demand this stock at the time it was transferred?

A. I don't think I did demand it.

Q. How came it to be transferred to you at that time?

A. Because I wished it put in my name as collateral for those debts which I had purchased and paid the money for down in Rhode Island. They all understood it. All knew about it. There was no secret about it. We didn't have any secrets there. Whenever any man asked me a question I always told him. I don't know that we had any secrets which I would not be willing the public should know.

Q. Why did you ask for this stock at that particular time?

A. Well, it was understood from Mr. Graves, who had been counsel for the road for several years previous to my having any knowledge of the road whatever, that there was some "debt stock"—stock put into the hands of certain gentlemen in Hartford as trustees, to pay the debts of the Providence, Hartford & Fishkill Railroad. When that road was purchased I was not conversant at all about the matter, for I was not a director in the road, nor interested in the road at that time, and all the knowledge I got was from persons who were interested in the road previous to my going in. I relied upon what Mr. Graves said as counsel, generally. I think he will bear witness to that.

Q. Why did you demand that stock at that time?

A. I don't think I did demand it, sir.

Q. How came you at that time to require them to deliver this stock over to you?

A. I never knew why the stock was transferred from Mr. Bartholomew and his brother trustee to Mr. Eldridge, Mr. Converse, and myself as trustees. I never understood exactly why it was done so, and I felt uneasy. I didn't think it was right, because if I died there was no claim that my administrator could have on those two trustees for any security for those debts bought in Rhode Island. I didn't think it right that that stock should stand in three names. I thought it ought to stand in my name, and I so stated, and it was put in my name as trustee, and there it stood until 1870.

Q. You didn't understand, then, that it stood in the names of the three trustees, to be applied to the payment of this amount which you had advanced?

A. I think it was the general understanding with Mr. Graves and all the gentlemen who were conversant with the trade with the Providence, Hartford & Fishkill Railroad, that that stock should go to the debts of the Providence, Hartford & Fishkill Road. I suppose that was the reason why they were willing to transfer it to me as collateral security alone, singly, in the room of three trustees. I don't know any other reason, sir.

243 Q. Then you understood that in the hands of those three trustees it would be held for you?

A. I did not understand that. I understood that the stock should be placed as collateral security for those debts. I didn't think it was placed as collateral security for those debts in the hands of three trustees.

Q. When did you understand it was to be placed as collateral security for that?

A. I understood it when I bought the account of Mr. Shepard.

Q. That that stock was to be collateral security?

A. Was to be collateral security I supposed. I don't think I should have gone down and paid $135,000——

Q. For what was it to be collateral security?

A. For the $135,000 in addition to the coupons.

Q. You understood it to be collateral security for that debt?

A. In addition to the coupons which I received from the Spragues. I never had any talk or conversation with any gentlemen about the office in any other light than that those coupons were as good as cash; that if the Boston, Hartford & Erie ever were in possession of money enough, and saw fit to pay my whole account, of course I should deliver up the coupons.

Q. Now, sir, you say that there was an understanding at that time by yourself with these directors or some one else that these coupons should be held as collateral security, and that these 7,349 shares of stock were to be held as collateral security?

A. I so understood. I don't think I should have gone down there and paid that amount——

Q. As collateral security for the amount you paid?

A. It was understood by me, and by everybody in the office, that that stock that was held by Mr. Bartholomew and the others, as trustees, should go towards securing the debts paid down in Rhode Island. It was a general understanding. There was no particular trade or bargain about it. If I hadn't understood it so, I presume I should not have purchased the Sprague account and other accounts.

Q. Did you purchase that Sprague account for yourself, or did you buy it for the Boston, Hartford & Erie Railroad Company?

A. I bought that account for Henry N. Farwell, and paid for it with money taken from A. G. Farwell & Company; and the money was charged to Henry N. Farwell until the year 1870—stood on the books charged to me.

Mr. BROOKS. No matter about that. The books will show that, and you may produce the books here. That is what I would like to see.

WITNESS. I have no objection.

Q. Now can you answer the question? You say you did not buy it in the interest of the Boston, Hartford & Erie Railroad—did you or not?

A. I bought it for Henry N. Farwell.

Q. Did you buy it for the Boston, Hartford & Erie Railroad Company?

244 A. I stated in my direct examination that if I had not been a director of the Boston, Hartford & Erie, I probably should not have bought that account. I bought it to keep it in the hands of friends of the road instead of enemies.

Q. That was the only reason?

A. I know of no other reason. I did not buy it to speculate.

Q. Were you acting in that purchase by order of the Boston, Hartford & Erie Railroad Company?

A. I was acting for myself. I was not acting for the Boston, Hartford & Erie Road. If I had been, I should have turned the account right over to them.

Q. Your sole purpose was to have that account stand as it was standing; that is, to keep the unsatisfied claim, but hold it yourself instead of its being held by another?

A. I don't know of any other reason.

Q. That is the sole reason why you advanced that $135,000?

A. I think it was for the interest of the Boston, Hartford & Erie Railroad that it should be held by friends instead of enemies.

Q. That is the sole reason you had for taking up that account?

A. I know of no other reason.

Q. And you had the understanding at the time that the 7,349 shares of stock were to go as collateral security for the debt, or for what you advanced?

A. I have no doubt it was the general understanding by all in the office, who knew anything about the stock, that that stock should go with the Boston, Hartford & Erie Railroad as security, so much security.

Q. You had that understanding at that very time, didn't you?

A. I have no doubt there was such an understanding. I had the feeling that I should receive the stock in addition to the security which I got from the Spragues. I have no doubt I felt that I should get that stock.

Q. Didn't you yourself have the understanding at that time that the 7,349 shares should go as collateral for the money you advanced there for the debt, or whatever way you put it?

A. I have answered that question once before.

Q. I don't understand that you have answered it.

A. I have answered the question several times; that that was the general understanding by everybody in the office.

Q. That includes you; you understood it so?

A. I suppose I did. As I said before, I should not have bought the

amount if I had not supposed there were other collateral besides the coupons.

Q. You were examined at Providence in the case of George W. Long vs. the City of Providence, were you not?

A. Yes, sir.

245 Q. You testified there that you purchased that account for yourself, and that the railroad company had no interest in it, didn't you?

A. I think very likely I did, sir.

Q. I want to ask you about some of your testimony there. Question 24 was this: "Has any person furnished you any money on account of this $135,000 from that day to this?"—that is, from the time of the purchase. Your answer is, "Not a dollar." Is that true?

A. That is true.

Q. That was your answer, was it?

A. That was my answer at that time.

Q. "Was there any understanding expressed or implied between you and the Boston, Hartford & Erie Railroad Company that you should do this thing? and if so, what was that understanding?" (Q. 86.) Your answer is, "No, I don't know that there was; they might have known of my intention, but there was no understanding about it, no promise given me, nor any security put into my hands for it." Is that true?

A. I state now that there was no bargain. I have no doubt it was true at the time I made the statement.

Q. You say, "They might have known of my intentions, but there was no understanding about it, no promise given me, nor any security put in my hands for it." Is that so? What do you say to that now?

A. I say that is so, sir.

Q. Now the next question—87. "Were there any moneys put into your hands, or any funds or resources?" Your answer is, "No, sir." Is that so?

A. That was so then.

Q. That question was put in continuation of an investigation which began by asking you whether you still remained out of funds; the first question is this: "How long was it before you were put in funds again that you had paid out, or any portion of it?" That was not answered. Mr. Holmes interposing, the question was put again, the 23d. "How long did you hold this investment or purchase?" You say, "What do you mean?" The next question is (23d): "You had paid $135,000 for something that the Spragues could not manage, who, it seems, had been nine years trying to get it. You thought it was a good investment. How long were you out of this money you invested?" Your answer to that is, "How many days is it from the 28th day of May, 1868, to the present day?" Question 24. "It is some time; you are out now? Has any person furnished you any money on account of this $135,000 from that time to this?" "Not one dollar." Is that so?

A. That was true when I made that statement; it is true essentially now. I know what you are coming to. You are coming to a few thousand dollars received for the stock.

Q. Didn't you deny that you had received anything at all, in money or anything else, when you testified in Providence?

246 A. "Put in funds." Yes, sir; I did.

Q. "Put in funds or resources," you did deny it, didn't you?

A. I did.

Q. That you ever received any money or any resources or any funds?

A. Or any funds.

Q. And that you had no understanding that you should have any with anybody?

A. I so claimed, as I stated before, that there was never any bargain or agreement. It was a general understanding that that stock should follow; that it was placed in the hands of those trustees after it was transferred by Bartholomew, I never knew why; it didn't look right, and it was placed in my name singly as trustee. I never considered I had any powers to sell the stock or to dispose of it, nor have anything to do with disposing of it, without a vote of the corporation or without consulting the corporation, until after the corporation failed. I found it was going into the hands of the receivers, and I sold the stock. The stock so stands. It is not credited to that account. I am ready to account to the Boston, Hartford & Erie Railroad Company for that stock; or if they obliged me to return the stock, I should be obliged to return the stock.

Q. Obliged to return the stock or have the money credited?

A. Or have the money credited. At the time that stock was sold, we were paying bills for which they agreed to put us in funds. There was $54,000 which should be paid, and they said which were honorable bills, and they would put us in funds from the proceeds of subscriptions on the bond, which they were going round to collect; but we never received a dollar of that money. The account stands just as it did, now.

Q. Of what money?

A. The $54,000 we paid in January, February, and March. The stock was sold about that time. They agreed to pay these bills or put us in funds, the corporation did. Mr. Barnard was then treasurer. They did not do it. I found everything was going to the dogs, and I ordered that stock sold, took the responsibility of it.

Q. That has nothing to do with the question put to you; but as you have stated it, I will ask you if you have received the proceeds of that stock?

A. We received the money; it stands on our books; seven thousand and odd dollars to Henry N. Farwell, trustee; a separate account.

Q. Had not this stock been sold before you rendered this account to the receivers? Didn't you render that account as holding so much stock?

A. Yes.

Q. Had not the sale of the stock taken place previous to your rendering the account to the receivers?

A. It had.

Q. Why did you not render it correctly?

247 A. Because I did not feel that I had any authority to sell it. I took the reponsibility.

Q. You had sold it?

A. I had sold it.

Q. And taken the money for it?

A. The money is there ready to be credited; I didn't intend to steal a cent of it.

Q. Then you say you had this stock transferred to you as trustee, but you did not consider that you had power to sell it?

A. No, I did not; because it was understood when the stock was transferred it was not to be sold.

Q. Were you not to sell it and account for the proceeds; was not that the statement that was made here?

A. I have made no such statement.

Q. Then there was no understanding that you were to sell it and ac-

count for the proceeds, to pay this debt so far as it was necessary to pay it in full, and then account for the surplus?

A. There was no such understanding as that; there was a distinct understanding that the stock was not to be sold.

Q. Who was that understanding with?

A. I think it was generally understood by the directors of the road.

Q. Who was present?

A. The directors of the road who were in the habit of meeting there, sometimes daily, sometimes weekly.

Q. Who was present?

A. The directors, generally, Mr. Eldridge, Deacon Converse.

Q. They understood that the stock was not to be sold?

A. That the stock was not to be sold; Mr. Graves was present; Mr. Graves knows, and objected to having the stock sold.

Q. Now you say that with Deacon Converse there was an understanding that this stock should not be sold by you?

A. I have no doubt about it.

Q. Do you say that Deacon Converse understood that this stock should not be sold?

A. I say I think there was an understanding with the directors and president of the road and the attorney, generally; I have no doubt but what Deacon Converse understood it with the rest of them; I have no doubt he was present, but I would not swear that he was.

Q. Now the two persons you have named as acquainted with that understanding are Mr. Converse and Mr. Eldridge; was there anybody else of the directors present when the transfer was made?

A. There was not, I think.

Q. At the time the transfer was made it was understood by Mr. Eldridge and Mr. Converse that you should not sell the stock?

248 A. I have no doubt that they all understood that that stock was not to be put upon the market.

Q. Was anything said about it?

A. Yes, sir.

Q. Who said it?

A. I said I didn't want it sold, and they agreed that it should not be sold.

Q. Who agreed to that?

A. Mr. Eldridge and Mr. Converse. I have no doubt that Mr. Converse knew about it; I wouldn't swear he was present, but I have no doubt he knew about it. It was generally understood by the directors. There was no secret about it. If he didn't inform himself, he might, if he wasn't present, but I haven't any doubt he was present.

Q. Then you were to take this stock and not sell it; is that so?

A. It was so understood, sir.

Q. What was the purpose of your holding it if you were not to sell it?

A. Why, as collateral security.

Q. It was to be held as collateral, but not to be sold; you hold it through 1869 into 1870 and then you do sell it?

A. So it seems.

Q. And you sold it in violation of that agreement between you, according to your statement?

A. It seems so, in violation of the understanding.

Q. What good would the holding of this stock do you if you could not sell it?

Q. Was it not to be forthcoming from the persons who received it?

A. The directors had to sign that bond. If the railroad corporation had loaned that money they had to see that it was returned.

Q. It appears from this memorandum that you had received $530,511.40. That was so, wasn't it?

A. If the figures say so, I suppose it was true.

Q. You were bound to make return of that money?

A. I have no doubt we had that money, and I have no doubt had a great deal more.

Q. By that bond you were bound to return that?

A. Yes, sir.

Mr. BROOKS. You received a large amount of money, did you not, Mr. Farwell, in the summer of 1868, out of the proceeds of the negotiation of $5,000,000 bonds with the Erie Railroad? There were $2,000,000 received in money, were there not, in July?

A. Yes, sir.

Q. And there was over $1,500,000 received as the proceeds of the Erie Railroad acceptances, wasn't there?

A. Yes; about $1,500,000.

Q. And you received this yourself, did you not, a great portion of it?

A. What do you mean by yourself? I was in New York at the time the sale was completed, and I brought home part of the money or checks with me, and they were given to the treasurer of the Boston, Hartford & Erie Railroad Company, and deposited to the credit of the Boston, Hartford & Erie Railroad.

Q. And besides that you received the acceptances which were converted into cash for the corporation?

A. They were converted into cash for the corporation.

Q. You collected it yourself, didn't you?

A. I don't know that I did, sir. I remember making a bargain with one James Fisk. I made a bargain with one Mr. James Fisk to cash those acceptances himself; the commissioners obliged us to get them into money; did not believe they were legal. He said he would go home and send the money and would come back in two or three days, but he did not live up to his bargain. After that there was another bargain made, but I don't say I was the one who negotiated it; I don't think I was.

Q. But you received the money?

A. I don't think I did. I think the treasurer of the Erie company received it.

Q. Who was the treasurer?

A. Mr. Hall.

Q. He is your partner?

252 A. Yes, sir; he is, and has been my partner over twenty years.

Q. He delivered it to you, after he received it, in certain sums?

A. I borrowed the money of the corporation; borrowed it of Mr. Hall.

Q. You received of that money several hundred thousand dollars?

A. I have no doubt I did.

Q. About 2,000,000 or 3,000,000 you received altogether?

A. I should not think it was so large an amount as that.

Q. In this Barry report, which I just now referred to, which your attorneys put in of September 16, 1868, is a memo.: "Memo. of A. G. Farwell & Company, $530,511.40." Now when you received these moneys did you give any memorandum?

A. Well, if he so states it in the boo*d*, I suppose we did.

Q. I want your recollection. Did you give one memorandum for that whole sum?

A. Whatever you find there on the book I have no doubt is correct. I did not give any memorandum nor draw a check. I never drew a check in my life from the Boston, Hartford & Erie Company's book. I did not think I even gave a memorandum, but I have no doubt Mr. Hall did or somebody in the office of A. G. Farwell & Company.

Q. Do you know whether any memorandum was given at all?

A. I was told there was at the time, that a memorandum was taken and put in the drawer.

Q. Where are those memorandums?

A. I don't know.

Q. What were they?

A. I have no doubt they were receipts, the same as we were in the habit of giving and had been giving for twenty years in our business. I have no doubt about it.

Q. Was it "borrowed and received?"

A. Sometimes; sometimes "received on account."

Q. You think those were "borrowed and received," do you?

A. I don't know. I don't know as I ever saw one of them.

Q. Have you a book that is called "Borrow and Loan Book"—A. G. Farwell & Company?

A. Yes, sir; I have always had one ever since I have been in business.

Q. Are those entered on that book?

A. I don't know anything to the contrary.

Q. Do you know?

A. I don't know, for I never looked. I never looked at the book of A. G. Farwell & Company. I never looked all through my own book of private accounts, in my life.

Q Is there on any book an entry or memorandum or voucher for this money which you received?

253 A. I have no doubt there is, but I have never looked at the book to see.

Q. Will you swear there is any memo. or voucher except the checks drawn?

A. I will not swear to anything I don't remember.

Q. You had this matter called to your attention before a committee of the legislature a year ago last March?

A. I think very likely, and whatever I stated there I stated to the best of my knowledge and belief.

Q. And you have never made any examination on which you can answer down to this day?

A. No.

Q. Did you agree to pay interest on these loans which you received out of the funds of the Boston, Hartford & Erie Railroad, the proceeds of the Erie transaction?

A. I have no doubt if there was any money borrowed by A. G. Farwell & Company, they were to treat it the same as if it were borrowed anywhere else.

Q. Then you say that you did borrow it on interest?

A. I don't say any such thing.

Q. I want to know your recollection, whether they were to pay interest on those funds?

A. I stated a moment ago that if they borrowed any money of the corporation, I have no doubt they were treated the same as if we had borrowed money anywhere else.

Q. I want to know if you know whether or not you were to pay interest on the money which they received from the Boston, Hartford & Erie Railroad Company?

A. Of my personal knowledge I don't know. There was no bargain made. I presume they were to treat it the same as if they borrowed the money from anybody.

Q. Didn't you tell the commissioners you were to receive these funds so as to keep them active and have them earn money?

A. I think very likely I did, sir. Whatever I did, I did from the best motives in the world for the benefit of the Boston, Hartford & Erie Railroad. I was not working for my personal interest.

Q. Have you had any doubt the corporation were to have interest?

A. I have no doubt but what the money would be treated as if it was borrowed of anybody else.

Q. That is, that they were to have interest?

A. I answer that question as I have before.

Q. Have you accounted to the road for interest?

A. I don't know. I never was a book-keeper. I have never examined the books of the Boston, Hartford & Erie Railroad in my life, nor the books of A. G. Farwell & Company. It was not my business.

Q. What did you do with these vast sums that you borrowed, amounting to hundreds of thousands of dollars?

254 (Mr. WIGGINS.) I submit whether it is competent and proper for a man to be obliged to state what he did with his own money.

The MASTER. I don't very well see how I can limit the inquiry upon cross-examination, because the object is to show that the concerns of the corporation and his own were mixed up.

WITNESS. They were not, sir. The commissioners understood at the time, and they all said they would keep it secret, that there were certain men here in State street, rich men—it is no use to call their names, I had rather not, and I won't be subjected to it—who wanted to get up the price of the securities of the Boston, Hartford & Erie Railroad, and help the road; and some of those gentlemen were the biggest men in State street. Judge Bigelow knew, and some of the directors of the Boston, Hartford & Erie Railroad knew, who were to have this money. Now, if it is important that I should expose the whole thing, and call the names of the parties, I can do it.

The MASTER. I don't think it important for us to know the names, but whether you took this money to use for the benefit of the corporation or to pay interest upon it.

A. Nothing in the world but to benefit the corporation.

Q. How benefit them?

A. By helping the securities. We could not build a railroad with the bonds at 50 cents on the dollar and the stock at $10 a share.

Q. Do we understand you to say that this large amount of half a million and more, which was minuted to your firm out of this 2,000,000 of dollars, you were using for the benefit of the corporation, in order to affect the prices of their stock and bonds, which would, of course, impose no obligation upon you to pay the interest, or was it for your own benefit?

A. I was not using it for my own benefit. I never took any money from the corporation for my own benefit.

Q. You did not expect to pay interest, then, did you?

A. If A. G. Farwell & Company borrowed money of the corporation the same as individuals, I have no doubt that they were allowed interest.

Q. Can you designate about what proportion you were using for the benefit of the corporation?

A. I should think $600,000 or $700,000.

Q. And how much more did you have? That paper reports five hundred and odd thousands of dollars to A. G. Farwell & Company. How much did you have in addition?

A. It is well enough for your honor to know that the contractors, Mr. Dillon and Mr. Munson, from month to month would come to me and ask me if we would be responsible for another month's work. I don't think they ever did a month's work in advance without coming to me and my saying, "If you will do another month's work I will see that you have your pay." I was constantly taking responsibilities of that kind. I was under obligations so large that when the company failed they owed us over $1,000,000 in money.

255 Q. (By Mr. Brooks.) This $530,511.40, which is in Mr. Barry's statement of September 16, 1868, is a memorandum of so much money loaned A. G. Farwell & Company, and not used in the purchase of stock for the company, or in any way for the benefit of the corporation. What was it used for?

A. Well, if it was really loaned A. G. Farwell & Company, I don't know as it is anybody's business what they did with it. I can't answer what they used it for; I don't know. If they borrowed that money of the railroad they paid it back again. If it is down there as a memorandum of A. G. Farwell & Company I have no doubt it is money loaned A. G. Farwell & Company. But I did not give any memorandums. It was a transaction between Mr. Hall, a member of our firm, and Mr. Barry, who kept the books of the Boston, Hartford & Erie Railroad Company.

Q. Was that sum loaned to A. G. Farwell & Company for their own use?

A. I have no doubt of it, if the memorandum was in the drawer.

Q. Then there is so much money which the corporation loaned you, and you received it from the proceeds of those bonds?

A. I have no doubt of it, if the figures are there and it so states.

Q. And at the same time you say they were owing you $135,000, paid on account of this Sprague debt; do you say that?

A. Yes, sir.

Q. I should like to know why you didn't take your own pay out of it?

A. You go back to the other question and answer a few minutes ago. That money is part of the money received from the Erie road. We had no money in the treasury except the money we received on the $5,000,000 bonds sold to the Erie, and $200,000 from Adams Express Company, which I believe had not been received at that time. But that money from the Erie road was bound to be put into the construction of the road; and if A. G. Farwell & Company borrowed any money from the railroad they certainly had to pay it back again. Now, I did not have anything to do with the books of A. G. Farwell & Company, and gave no orders how entries should be made.

Q. Your explanation of it is that they required you to apply that money to the construction of the road. Why should you pay other floating debts and not pay yourself?

A. I do not know anything about it. You seem to treat me as though I were the financial man of the corporation; that I had the handling of the whole of the money, paid whom I pleased, and whom I didn't please I didn't pay. There was no such thing.

Q. Who did?

A. The corporation.

Q. Who was the corporation?

A. The president, vice-president, directors, and treasurer. The treasurer did not pay any bills unless he was authorized by the directors.

256 Q. Didn't you have the management of the funds?

A. Certainly not. I was not the financial agent, unless putting more money into the road than any one else made me their financial agent.

Q. Then you say you did not pay yourself out of the moneys, but borrowed them and paid interest to this corporation after they were owing you this $135,000, because those funds were to go to the construction of the road. Have you any other explanation to make?

A. I don't know of any other.

Q. I now find that you received not only the $530,000 out of the $2,000,000, but $225,000 out of the proceeds of the negotiation with the Erie Railroad, in connection with the $5,000,000 bonds. What was that for?

A. I don't know anything but what I heard. I heard it was from the sale of bonds in New York.

Q. Didn't you receive it?

A. I received a certain check from John S. Eldridge, which stood to the credit of John S. Eldridge until the latter part of 1869. I never knew for whose account or what the money was for until then. I think the check was for $500,000, and it was deposited.

Q. To whose account?

A. Of J. S. Eldridge.

Q. It was on your account?

A. Yes, sir; it so stood on our borrow and loan book. My impression is that it was $500,000. I think it was in the spring of 1868. There were no orders with it, except that I should hold it to the credit of John S. Eldridge. He drew on us at different times, and drew it down to $225,000, and that stood on our borrow and loan books up to the latter part, I think, of 1869. At any rate, I then found out who the money belonged to and where it came from, and what it was for. That is all I know about it.

Q. Where did it come from?

A. It seems it came to Mr. Eldridge from the sale of 500 and odd bonds to the Erie Railroad Company—Berdell bonds—at the time he was president. It turned out to be a parcel of the five-million bonds sold to them for four millions of dollars. If you look over the report of the commissioners you will find that the report says: "Sale of $5,000,000 bonds to the Erie Railroad, at 80 cents, amounting to $3,500,000 and odd." I asked the commissioners why they made the figures in that way. Said I, "There was $5,000,000 sold at 80 cents;" but they did not seem to get the figures through their heads, and they reported that we received so much from the proceeds of the sale of those $5,000,000 bonds at 80 cents.

Q. You did not know what this $500,000 that you received from Mr. Eldridge was for until the latter part of 1869; never had any official notice from Mr. Eldridge from the time it was transferred whose money it was?

A. I did not know, except Mr. Eldridge's.

257 Q. Do you think he controlled the $500,000?

A. He was president of the Erie Railroad, and I think you gentlemen know whether they control any money or not.

Q. You didn't know it came from the negotiation of the five-million bonds?

A. No, sir; I did not.

Q. You paid out to Eldridge all of that except $225,000?

A. Yes, sir.

Q. What became of that $225,000?

A. It was passed to the credit of the corporation.

Q. When?

A. When the settlement was made in December, 1869, or whenever it was found out where the money should go. The money was not lost nor stolen.

Q. Meanwhile you had that $500,000. Did you say you did not know where it came from?

A. I knew it came from Mr. Eldridge, but I did not know for what.

Q. You didn't know it came from the sale of the bonds of the Boston, Hartford & Erie Railroad to the Erie?

A. No, sir. I had no orders or authority from Mr. Eldridge to carry it.

Q. The whole amount you appear to have borrowed, according to the books, is $2,332,368.91. Was that whole amount borrowed?

A. I should think not, sir.

Q. Was it received?

A. If the check-book shows that it was received by A. G. Farwell & Company, I have no doubt it was.

Mr. WIGGINS, I do not know how far the gentleman is going in regard to those checks, but if the witness is to be examined about them, he should have an opportunity to examine them, and, if it became material, he should have an opportunity to trace them out. We object to that mode of examining the witness in regard to a number of checks, in gross.

Mr. BROOKS. The checks are here; he can look them over if he likes.

WITNESS, (without having examined the checks.) So far as I know, I want this statement. Mr. Munson was contracter on the road between Putnam and Willimantic. I think his estimates amounted to $250,000 some months; Mr. Dillon's to about the same. There was $500,000 to be provided for, and frequently A. G. Farwell & Company would take a check from the Boston, Hartford & Erie Railroad Company for a certain amount and deposit to the credit of A. G. Farwell & Company, and then give them our checks for the amount of the bills, and to other parties, too. If the checks were shown me, I could not identify them what were borrowed and what not. Perhaps one in ten ever came into my hands. That is the best explanation I can make. Now, of this $2,332,368, there was one item, for instance, of $125,000, which was paid to secure the Boston wharf property. A. G. Farwell &
258 Company's checks were given for that. There was $150,000 in money paid to get the notes of the Erie Company cashed, which the commissioners obliged us to have cashed. The checks of the Boston, Hartford & Erie Railroad Company were not given for that.

Q. (By the master.) What amount of that sort of checks was there?

A. There was $150,000 paid to certain individuals to cash those notes, and 150 bonds besides. Who pocketed the money, I don't know. I know I didn't. I don't think any one in Boston did.

Q. (By Mr. Brooks.) There are two items where you say you paid out money in your checks?

A. I say there were more; that we almost always had to pay Munson and Dillon certain portions of their estimates from our own funds. All I can testify is, that we never took one dollar from the Boston, Hart-

ford & Erie Railroad Company and covered it up, or stole one dollar of it. I have not had the books of the corporation to examine since the summer of 1870. They have been in the hands of the receivers. The accounts of A. G. Farwell & Company rendered to the Boston, Hartford & Erie Railroad Company were examined; there was an auditor chosen to examine the accounts, and the directors voted unanimously that the accounts should be settled as rendered, and it was settled and notes given by the corporation. I have never examined the items of the account; I trusted to the book-keepers to do it. I trusted to Mr. Barry, and to our book-keeper. I have no doubt it was done correctly.

Mr. WIGGINS. Are those checks in for any purpose?

The MASTER. I should think not. I have not seen them.

Mr. THURSTON. Then I have misunderstood the case. I supposed we verified them by Mr. Clark.

The MASTER. Are they marked?

Mr. BROOKS. No, your honor.

The MASTER. Then they are not in.

Q. (By Mr. Brooks.) In this account of Mr. Barry, of September 16, 1868, there is an entry, "Memorandum of A. G. Farwell & Co., 530,511.40." Now what other funds which you received did you use in the purchase of stocks of the Boston, Hartford & Erie Railroad, in the summer and fall of 1868?

A. I have no doubt we had some. We had to use some of it; as I said here a few moments ago, to pay $125,000 in one place, and $150,000 in an other place, and $10,000 to a gentleman in New York for his opinion. The commissioners obliged us to get the opinion of William M. Evarts of New York in relation to a certain transaction before they made their report.

Q. How large an amount did you expend in the purchase of stock of the Boston, Hartford & Erie Railroad?

A. I don't know, sir.

259 Q. Was it several hundred thousand dollars?

A. I should think likely it might have been several hundred thousand dollars.

Q. Wasn't it more than a million?

A. I should not think it was, but I don't know.

Q. About how much was it?

A. I should think several hundred thousand dollars.

Q. Say more than $500,000?

A. Might have been.

Q. Now that money that you received and applied to the purchase of stocks, did you give the memorandum of A. G. Farwell & Company for, and did you pay interest?

A. That, sir, I do not know about. The checks were not drawn by me, nor the memorandums given by me in any of the transactions.

Q. Do you consider the application of those funds as an application of them to construction account?

A. We thought, some of us, at the time, that the application of the funds was for the best interests of the Boston, Hartford & Erie Railroad Company, not our individual interest.

Q. It was not construction account?

A. The money went into construction account when the securities were sold.

Q. But the buying of the stock of the corportion was not an application, as you understood it, to construction?

A. No.

Q. Then you did not use those funds for construction, as you say you understood they were to be used? When they sold the securities, the deficiency was charged to construction account? That is the way you explain it?

A. I haven't explained it any way; I don't know anything about it; I never looked into it.

Q. Do you mean that the loss was carried into construction account?

A. I don't know what account it was carried into. The proceeds of the stock, whenever it was sold, went into the building of the road; there is no doubt about that.

Q. What of the loss?

A. I don't know where they put it. It was put on the book.

The MASTER. Sometimes the losses are put to construction account.

WITNESS. Very likely it was put to construction account. The loss was not large.

(Adjourned.)

WEDNESDAY, *October* 18, 1871.

The hearing was resumed at 10 o'clock.

Mr. WIGGINS. I suppose no question is made in regard to the bringing of the suit of George W. Long & Company in Rhode Island;
260 the trial of the suit; the appearance of the city of Providence contesting the right of the plaintiffs to recover in that suit; and that Judge Shepley now has the matter under advisement for judgment.

Mr. THURSTON. Oh, no, sir; we make no contest about that.

Cross examination of H. N. Farwell resumed:

Q. (By Mr. Brooks.) Besides the accounts of $530.511.40, referred to in Mr. Barry's statement on page 44 of "Papers Relating to the State Loan," I understood you to say there were other amounts which you had received after July, 1868, and applied to the purchase of stock of the Boston, Hartford & Erie Railroad Company. Is that so?

A. I think I stated so, sir.

Q. And that the amount so applied was received from the Boston, Hartford & Erie Railroad Company. Is that so?

A. Yes, sir. What I stated yesterday I think was correct, that we received the money from the corporation, and purchased some stock with it.

Q. As a loan?

A. As a loan.

Q. On interest?

A. That, sir, I don't know.

Q. And you bought stock after July with that money?

A. I don't know whether the money was borrowed in the name of A. G. Farwell & Company, or how it was put on the book. If it was borrowed in the name of A. G. Farwell & Company, of course it was their money after they gave their memorandum for it.

Q. In whose name did you buy the stock?

A. It was mostly put in my name, I think.

Q. Was not the whole of it put in your name?

A. I can't say, sir.

Q. Did you buy it for the corporation?

A. It was bought in the interest of the corporation, not as a private speculation on my part.

Q. Did you buy it for the corporation?

A. It was bought in the interest of the corporation. It was put in my name.

Q. What do you mean by "the interest of the corporation?"

A. I think I stated yesterday that whatever we did as individuals or directors of the Boston, Hartford & Erie Railroad Company, we did what we thought was for the best interest of the corporation.

Q. Then you don't mean that you bought it for the corporation?

A. We bought it for the interest of the corporation.

Q. Did you buy it as agent of the corporation?

261 A. You may call it what you please, sir. I don't know that it was published that I was the agent of the corporation. I am not aware that it was.

Q. What I want to ascertain is, whether that stock was bought for the corporation, so that the stock, when bought, became the property of the corporation?

A. Well, sir, it was so considered, I believe, and so carried on the books at the close of the transaction.

Q. That is the way it was settled up in the end?

A. Yes, sir; I believe so.

Q. You testified before the legislative committee, as you have stated, March 23, 1870, following Mr. Eldridge. I propose to read from the phonographic report, taken by Mr. Yerrinton, of what you said. I want to call your attention to this, because I wish to ask you some questions about it. I read from page 208:

"Q. You commenced buying shares for the company early in the fall of 1868?

"A. I did.

"Q. With the knowledge of Mr. Eldridge?

"A. I think that Mr. Eldridge understood that I was buying stock.

"Q. Wasn't the matter talked over between you and him?

"A. Not the details. I think it was understood that I was buying stock. I have no question that Mr. Eldridge knew I was buying stock for the good of the corporation.

"Q. Didn't you talk it over with him?

"A. I said he knew it. He didn't want to know anything about details.

"Q. That began early in the fall?

"A. It was some time in the fall of 1868.

"Q. As early as September?

"A. I wouldn't say how early; I have no dates. I can't tell here, without going and looking at the books.

"Q. How much did you buy that fall?

"A. I can't say that.

"Q. As nearly as you remember?

"A. I should think twenty-five or thirty thousand shares.

"Q. Did you talk with any of the rest of the directors, and inform them that you were buying shares?

"A. I don't know that I did.

"Q. Did you talk with the treasurer?

"A. The treasurer must have known it.

"Q. Where did you get the money?

"A. We borrowed some of the corporation. It was not bought in the name of A. G. Farwell & Company.

"Q. Why not?

262 "A. Because I chose to take charge of it myself. I chose to hold the stock.

"Q. You borrowed money of the company, and then bought stock in your own name, and carried it for the company?

" A. Yes, sir.
" Q. Then supposing it rose in value ?
" A. I think the corporation would have had the benefit of that.
" Q. What makes you think so ?
" A. I know so.
" Q. You had borrowed money at seven per cent. of the company. You owed the company money ?
" A. Very well ; I calculated to pay it to them.
" Q. You bought the stock, and took it in your own name ?
" A. I did.
" Q. And none of the directors knew it, with the exception of Mr. Eldridge ?
" A. I don't know that they did.
" Q. No man connected with the company knew of it ?
" A. I don't know that they did—the details. I don't think they did.
" Q. Had you any agreement with the company in reference to that stock ?
" A. No, sir, I was responsible; and A. G. Farwell & Company were responsible for the money we borrowed of the corporation.
" Q. Supposing those shares had risen, what had the corporation got to show that they would get the benefit of anything but their seven per cent. ?
" A. If they trusted me with the affairs of the corporation, I suppose they felt that I should give the corporation everything that was their due.
" Q. Who trusted you ?
" A. Mr. Eldridge. I trusted him in certain matters, and he seemed to be willing to trust me in certain matters.
" Q. You were buying these shares in your own name ?
" A. I was to protect myself.
" Q. And paying seven per cent. interest ?
" A. Very well.
" Q. Why were you paying seven per cent. interest if you were using that money for the corporation ?
" A. We took the money of the corporation, and we thought it was for the benefit of the corporation to keep up the price of their securities. I had it intimated to me constantly that there were parties in New York who stood ready to take large amounts of this stock if they could get control of it. They never did, but I believed they were willing to when it was so stated to me. It may have been all moonshine, but I believed it.

" Q. You got about 50, 000 of those shares ?
263 "A. I did.
"Q. What became of them ?
"A. They were sold.
"Q. When ?
"A. From the 1st January, 1869, down to within the last sixty days.
"Q. By whom were they sold ?
"A. By me.
"Q. Since July, 1868, how much did you buy?
"A. I told you, somewhere from twenty-five to thirty thousand shares.
"Q. Was it not the case that in March, 1869, the company had over 100,000 shares on hand ?
"A. They had fifty thousand shares that had not been issued the 1st of January, 1869.
"Q. Well, how much else had they ?

"A. I should think they had from seventy-five to one hundred thousand shares. It may not have been short of one hundred thousand; I never figured it up in my life.

"Q. Wasn't there a time when they had more?

"A. It might have been so.

"Q. Don't you remember any time when they had more?

"A. No, sir. I never figured to see how much they had on hand."

Q. Did you so testify?

A. I presume so, if that is in print, sir.

Q. Is it true?

A. Substantially, I think, sir.

Q. There was a loss on those shares so bought by you, was there not?

A. I think there was.

Q. Do you recollect how much it was?

A. I don't.

Q. I refer you now to page 223 of your testimony. I see in the stock account, where the stock losses are made up, this entry:

Loss on 56,257 shares carried by H. N. Farwell for the corporation	$715,179 79
Less interest, commissions, &c	109,748 49
	$605,431 30

Won't you explain that?

A. That was an adjustment of the losses, made in 1868, in the purchase of securities. If the securities had been kept up through 1869, there would have been no loss. I think there was a hundred thousand dollars interest and commissions. It amounts to seven hundred and fifteen thousand dollars.

264 Q. That was on the amount bought in 1868?

A. Yes, that was on——

Q. Between July, 1868, and January, 1869?

A. Yes, sir; most of it.

Q. So there were 50,000 shares bought at that time?

A. My testimony is before the committee of the council correctly about that. I have stated all the stock purchased by me that I have known anything about since I have been a director.

Q. That is, all you purchased for the company after July, 1868, was bought before January, 1869?

A. I don't say the whole 50,000 shares were bought between July and January; I say that includes all the stock of the corporations I have had anything to do with during the three years I have been a director.

Q. Is that a correct statement of the loss referred to?

A. I don't know, sir. I did not make up the account; I presume it is; I have no reason to doubt the figures.

Q. Then there was a loss on this stock that you bought, after taking out your interest and commissions, of $605,403?

A. If the figures say so, I presume it is correct. I have no reason to doubt the clerks.

Q. You have presented an account here, ("Defts, 1.") Is this loss to which I have just referred carried into that account?

A. I don't know. I have never examined to see.

Q. Won't you examine it and see?

A. I can't say. I could not tell if I should examine it. I am no accountant, and I never examined the books. I don't know anything about it. I presume the account is made up correctly. I have no reason to doubt it.

Q. Was this money which you took from the corporation and invested in stocks carried into that account?

A. I don't know, sir.

Q. This account commences September 21, 1868; does it cover the amounts which were drawn out by you after July 1, or received by you after July 1, from the corporation?

A. I don't know anything about it. I presume it covers all the money drawn out by A. G. Farwell & Company.

Q. After July 1?

A. I have no doubt it does.

Q. After the receipt of the two millions and the fifteen hundred thousand dollars?

A. Yes, sir; after that receipt.

Q. Do you say that that account covers all the moneys received by A. G. Farwell & Company out of the two millions, and out of the fifteen hundred thousand dollars?

265 A. I have no reason to doubt it, sir.

(Mr. Brooks offered in evidence the checks drawn by Samuel Hall, jr., treasurer, in the National Bank of Commerce, payable to A. G. Farwell & Company, and indorsed A. G. Farwell & Company, August 10, 1868, $107,703.46; August 15, $103,519.44, &c. Counsel for the defendant objected, on the ground that by the terms of the reference inquiry into the general relations and indebtedness of the parties was expressly prohibited.

Counsel for the petitioners stated that the evidence was offered to impeach the account, and to show that Farwell, having received two millions of dollars from the corporation, must, if he advanced the money as stated by him, have been paid, and as coming within the clause of the reference provided for further reference if it should become necessary to inquire into the general relations of the parties.

The master excluded the testimony, but stated that he would report the offer of proof of the plaintiffs in such terms as they desired.

Mr. Brooks offered proof as follows: That the account presented commences with the item September 21, 1868. That prior to that date there had been received upon checks drawn by Samuel Hall, jr., treasurer, on the National Bank of Commerce, payable to the order of A. G. Farwell & Company, and indorsed by A. G. Farwell & Company, $718,553.46, not entered in the account at all.

That after that date, September 21, there were similar checks drawn and received by A. G. Farwell & Company, $1,165,815.45, in the months of September, October, and November, 1868, not in the account.

That $448,000 of the checks referred to in Mr. Clark's testimony are in the accounts rendered and marked "Defendant, 1." That a large part of what is in the account are entered as loans. Of the whole amount of checks referred to by Mr. Clark in his testimony, $2,332,368.91, only $448,000 are in the account.)

Q. You had stocks of your own in 1869?

A. I think I had some, sir.

Q. Large amounts, hadn't you?

A. Not very large amounts. I don't know what you would call large amounts.

Q. You sold them out in 1869?

A. I think not, sir; I think they were not all sold in 1869.

Q. Pretty much all of them?

A. I think not.

Q. You went on selling the stocks from time to time through the whole year?

A. There were some stocks bought in 1869, and some sold.

Q. How much were bought in 1869?

A. I do not know.

Q. I understood your testimony to be that after the first of January the corporation did not seem to be disposed to make purchases of stock.

266 A. Did you ask me if I bought stock for the corporation in 1869?

Q. Yes, sir; did you buy stock in 1869 for the corporation?

A. I presume my testimony there is correct, because it was about the time. It was in the fore part of 1870 or the last part of 1869, and I testified to the best of my knowledge and belief.

Q. Did you buy any in 1869?

A. There were stocks bought in 1869.

Q. What amount?

A. I could not say; I don't mean to say they were bought in the interest of the corporation. You asked me if I bought and sold Farwell's stocks in 1869, and I said we did.

Q. That is, of your own.

A. All our own.

Q. To any large amount?

A. I don't know; I should think likely several thousand shares. I have no doubt of it.

Q. Toward the close of the year you disposed of pretty much all you had?

A. 1869?

Q. Yes, sir.

A. Toward the close of the year the road broke down, in October or November, and we got rid of a good deal of stock as fast as we could.

Q. How much stock of your own did you sell?

A. I could not say.

Q. Did you sell the corporation stock to any large amount in 1869?

A. We sold what we could sell.

Q. You bought for the corporation; did you sell that all along?

A. I have no doubt that was sold as fast as it could be put out.

Q. In 1869?

A. Some of it, I don't know how much. As I stated, whatever management there was thought to be for the best interest of all concerned——

Q. That $225,000 that you received, which you say was part of Mr. Eldridge's check for $500,000, and which you say you received in the spring of 1868, was that any part of the two millions, or of the proceeds of the sale of the drafts, fifteen hundred and odd thousand?

A. No, sir.

Q. Then it was part of the difference between the $2,000,000 and the drafts and the $4,000,000—that $500,000?

A. Yes, sir.

Q. Did you use that $225,000?

A. In what way?

Q. The question is, whether you used the money.

267 A. I can refresh my recollection by this book if I can find the entry. Mr. Eldridge from time to time drew out the money down to $225,000, and that stood to the credit of Mr. Eldridge, I think, until the settlement of the accounts made in the latter part of 1869.

Q. Then you credited to the corporation? Had you used that money?

A. I don't think likely it lay idle; it was in our possession.

Q. I will ask you about the Sprague account some questions. The amount of the Sprague debt was $161,818.06, and the coupons were some $82,000 to $84,000; over $80,000, was it not?

A. I think it was about $84,000.

Q. Which accompanied the account?

A. Yes, sir.

Q. Did you take any measures to collect that balance of account after you received it?

A. No, sir.

Q. Were you aware there were suits pending in Rhode Island and Connecticut by the Spragues against the Hartford, Providence & Fishkill Railroad for the purpose of collecting that account?

A. I think very likely I did; I don't recollect about it. I presume the counsel mentioned about the suits and about having them withdrawn.

Q. Didn't you know that this account which you say you purchased was in suit?

A. I might have known it. I don't say that I didn't know. I think very likely that I did know it.

Q. Do you think you did or did not? Did you or not know it?

A. I think very likely I knew it.

Q. Will you say so as a matter of fact whether you knew it or not?

A. Before I purchased the account? No, I can't state positively that I did.

Q. You bought this account without knowing whether it was in suit or not?

A. I bought the account because I thought it was for the best interest of the Hartford & Erie that the account should be held by the friends of the road, and it was understood when I purchased it that that account was not to be pressed for payment.

Q. If you will answer my questions as I put them we will get through it very quick. I asked you if you purchased this account without knowing whether it was in suit or not?

A. I think I have answered you two or three times that I am not sure. I presume I might have known it.

Q. Haven't you some more definite opinion whether you knew it was in suit or not?

A. I say I think I must have known it. I don't think the suit was harped upon as important matter. I can't answer yes or no positively.

Q. Were you aware this had been in suit some ten years?

A. I was not aware of it except from hearsay, because I never went down there about the suits.

268 Q. Whether you were informed that it was in suit, or understood it to be in suit, that this was a litigated claim. Had you examined this account of the Spragues against the Providence & Fishkill Railroad to see what it was composed of?

A. I never made a thorough examination. Mr. Graves said he had examined it and Mr. Bartholomew had examined it. They didn't express any doubt about it.

Q. I asked if you had examined it?

A. No, sir; I had not thoroughly.

Q. Had you examined it at all?

A. Very likely I looked at the papers and looked at the accounts generally.

Q. Did you know it was a debt or account that had been standing some ten years overdue?

A. It showed on the face of it.
Q. Did you know at the time you bought it?
A. I have no doubt that I knew it.
Q. Then taking out from the amount of this debt $161,818.06 the 84,000 coupons, there was a balance on the account some ten years old overdue?
A. Yes, sir.
Q. I want to know about the discontinuance of the suit; did you direct the case to be discontinued?
A. No, sir.
Q. Mr. Bartlett put this question to you at the trial in Providence. Question 1 of the cross-examination: "I understood you to say you never knew anything about the suit in this matter by the Spragues against this debt. Were you ever cognizant or did you authorize any entry in court in regard to that suit?
"A. When I am sick I am always in the hands of my physician, and do pretty much as he says; and when I am in the hands of counsel I do pretty much as they tell me.
"Question 2. Did you authorize it?
"A. They said the suits would be withdrawn. That is the term they used with me.
"Question 3. That is all you know about it?
"A. The suits would be withdrawn.
"Q. (By Mr. Thurston.) You never dissented from it, did you?
"A. They said the suits would be withdrawn."
Q. Is that correct?
A. I have no doubt it is correct.
Q. The suits were withdrawn with your consent, were they?
A. I don't know in what manner they were fixed. As I stated down there at Providence, when I am in the hands of my counsel, I don't advise them, but they advise me.
Q. You were the owner, you say, of this debt you bought, but you don't know whether the suits were discontinued or entered settled, but that you left that for your attorneys?
A. I had no idea that the suit would be entered settled.
269 Q. You did not think it would be entered settled?
A. No, sir.
Q. Who was your attorney that you relied upon?
A. Mr. Graves.
Q. Do you mean to say Mr. Graves was acting as your attorney in this matter of making these entries?
A. In the settlement with the Spragues, I do.
Q. So he had it entered? This suit being upon an open account, the last items being about ten years old when you discontinued the suit, it was outlawed, was it not?
A. I don't know anything about the laws of Rhode Island.
Q. Had it not been standing more than six years?
A. I am not a lawyer, and don't know anything about it.
Q. Were you not aware that by the discontinuance of this suit the account would be outlawed—the debt would be outlawed?
A. I was not aware when I bought the Sprague account that there would be any question that some time or other they would pay that account back to me.
Q. Who?
A. The corporation.
Q. What corporation?

A. The Boston, Hartford & Erie. That they would buy that account and pay me for it. If there had been any doubt expressed about the account being outlawed, probably I should not have bought it.

Q. You were not looking to the Fishkill corporation. You were looking to the Boston, Hartford & Erie?

A. I had reason to suppose the Boston, Hartford & Erie would be able to re-imburse me and to pay the account. That was before it got into the hands of receivers.

Q. You didn't look to enforcing the claim against the Hartford, Providence & Fishkill?

A. I didn't think there would be any need of it.

Q. After the discontinuance of the suit you had the coupons under which you looked for re-imbursement?

A. The coupons were always considered good as so much cash.

Q. Where were you going to get the rest of the account?

A. I expected it from the Boston, Hartford & Erie Railroad.

Q. Did anybody agree to pay the balance of it?

A. At any particular time? no, sir.

Q. Did the Boston, Hartford & Erie ever agree to pay that balance?

A. I have no doubt they agreed to assume the account.

Q. How?

A. In paying for it some time when they were able.

270 Q. What do you refer to when you say they agreed to assume the account?

A. Do you mean any particular time?

Q. Yes, sir.

A. No, sir; no particular time.

Q. What do you refer to?

A. It was the general understanding that the Sprague account would be assumed by the Hartford & Erie, and paid by them if they were able; and we had no doubt but that they would be able. We didn't think it was going into the hands of receivers.

Q. You were acquainted with the contract between the Hartford & Erie and the Providence, Hartford & Fishkill, were you not?

A. No, sir.

Q. You didn't know anything about that contract?

A. I supposed there was a contract, but I was not a director in the Boston, Hartford & Erie in '63, '64, or 65, when that contract was made.

Q. Gov. Bullock put certain questions to you and Mr. Eldridge, Whitney and Converse, one of which was, "As to the relation of the Boston, Hartford & Erie to the Hartford, Providence & Fishkill, a contract is referred to which has not been produced. On what terms can the former company get possession of the latter company's road? The contract with the Hartford, Providence & Fishkill Railroad Company was furnished to the honorable commissioners. It was in reference to the purchase and sale of the said Hartford, Providence & Fishkill Railroad to Boston, Hartford & Erie Company." Then you go on and describe that contract. Didn't you know what that contract was?

A. Mr. Graves was acting as counsel. I have no doubt he explained the contract.

Q. Didn't you know yourself?

A. I don't know that I had read the contract myself at that time.

Q. Did you know that there was any agreement by the Boston, Hartford & Erie to assume the debts of the Hartford, Providence & Fishkill?

A. It was so stated by the counsel.

Q. In the contract?

A. I think so.

Q. That you knew?

A. I knew it from hearsay. I don't think I ever read the contract in my life up to this time; I don't think I have read the contract; I don't know what you want to get at particularly. If you want to make me out a lawyer or legal authority——

Q. I don't want to make anything of you. What steps did you take to collect this debt? You say you didn't proceed against the Hartford, Providence & Fishkill. Did you proceed against anybody else? Did you undertake to collect the debt?

A. I think there was notice given to the trustees of the Fishkill road to pay the coupons.

271 Q. That is the first action you took, April 15, 1871. You gave notice to the Hartford, Providence & Fishkill to pay the coupons?

A. Yes, sir.

Q. Did you ever undertake to collect those coupons until that date?

A. No, sir.

Q. You took no action about it at all?

A. No, sir.

Q. You had $15,000 of coupons of the city of Providence?

A. Yes, sir.

Q. You say you told Mr. Long that they were cash, and would be paid on presentation?

A. No; I didn't say so.

Q. Didn't you state that you told Mr. Long they would be paid?

A. Not Mr. Long.

Q. Mr. Watson?

A. Yes, sir.

Q. You told him they would be paid on presentation?

A. I had no doubt they would. I knew no reason why they would not.

Q. You got them, in fact, on the 27th of May, 1868, and you delivered them to Mr. Long or to Long & Company?

A. Not on the 27th of May.

Q. About that time. You delivered them to Long when?

A. I think it was in the fall of 1870, or summer.

Q. There was two years and a half you held those coupons. You say you owned the coupons, did you?

A. Yes, sir.

Q. Why didn't you present those coupons for payment to the city of Providence in those two years and six months?

A. It was generally understood at the time the claim was purchased that it was to lay as an honorary debt until the corporation was able to assume it. I don't think it was understood that I should press the claim on that account, or the coupons.

Q. Why should you favor the city of Providence? You had paid $135,000; you had $15,000 that you could get at any moment by presenting the claims to the city of Providence. Why should you favor the city of Providence? Why not collect your $15,000 and reduce your advance by that amount?

A. I think I had good reasons for not presenting the claims. We were trying to get a charter, and a very important charter, for the Boston, Hartford & Erie through the Rhode Island legislature, and we tried to keep the people good-natured, and we didn't press any claims upon any one; in relation to the Sprague matter and the other accounts

272 we bought down there, I never had any doubt but what the city

of Providence would pay the coupons. We were not so short of money that we had to go down there and get it. If I went down there I should have exchanged with the city of Providence (if I had the claim) the same as I did with the city of Hartford. Then I was getting a seven per cent. coupon instead of a six per cent.

Q. You say the reason was, you were getting an act through the legislature of Rhode Island. If that was a debt of the city of Providence, which was to be paid on presentation, was there any reason why the city of Providence should be offended or act adversely to you on being asked to pay an undisputed debt?

A. I don't know of any reason why the city of Providence or any one else should not pay. I never had any reason to suppose the city of Providence would not pay these coupons.

Q. You thought if you asked them to pay an honest debt it would affect injuriously your prospects of getting the act passed by the legislature of Rhode Island?

A. That is one reason. Another reason is, it was generally understood when I bought that Sprague account that it should stand, and none of the claims should be pressed for the present. That it should be held as a sort of honorary debt. I never talked with one of the city officials about them in the world. I had no reason to doubt that they were to be paid.

Q. You say it was understood the claims should not be pressed. Why not against the city of Providence?

A. I supposed the Boston, Hartford & Erie would take up that account, and the coupons would be surrendered to the Boston, Hartford & Erie. I thought I was perfectly safe in letting the account lay as I bought it.

Q. Were you not losing interest on those coupons?

A. I was in hopes not. I understood there was a vote on record that there should be interest on the coupons.

Q. What vote do you refer to?

A. I was told, and I think I have seen it since this hearing, (I think Mr. Bartholomew was president at the time,) that there should be interest paid on all outstanding coupons.

Q. Providence coupons?

A. Outstanding coupons.

Q. Providence coupons?

A. The coupons outstanding on the Hartford, Providence & Fishkill Railroad.

Q. I am asking about the city of Providence. I don't think there was any vote on them. There was no interest on them.

A. There was no interest accruing on the coupons which the city of Providence held in place of them. I supposed if I had pressed the payment of the city of Providence coupons, they would press the payment of the Hartford, Providence & Fishkill ones which they held; which was one good reason why I should not press the city at the time we were trying to build our road.

273 You knew the city of Providence coupons were not bearing interest?

A. I did not know it.

Q. Didn't you testify at Providence that they were not bearing interest.

A. I presumed they were not bearing interest.

Q. You thought they were not bearing interest?

A. But the coupons they held as substitutes were bearing interest.

Q. This corporation was losing interest on their bonds which was accruing against them, and they were not getting any interest on these coupons?

A. I was not president of the Boston, Hartford & Erie when the vote was passed.

Q. It was understood that these coupons were not to be pressed in your hands; with whom was that understanding?

A. I guess it was the general understanding with the Hartford & Erie Road.

Q. Will you state the persons with whom that understanding was had?

A. No, sir; I could not point out any particular man. I should point them all out as directors of the road.

Q. Do you say that all the directors of the road had requested that, or expressed a desire that they should not be pressed?

A. I don't know that any of them had requested it, but it was generally understood.

Q. The city of Hartford bonds, you say, you exchanged?

A. Yes, sir.

Q. Did you know that upon those coupons which were received from the city of Hartford one-half of one per cent. had been paid?

A. No, sir.

Q. You didn't make any inquiries about that?

A. No, sir.

Q. How came you to go there and exchange them?

A. I thought I was getting seven per cent. for six per cent. coupons, and Mr. Bartholomew rather intimated that some one about the road, who was familiar with it before I went in, thought those coupons of the Hartford, Providence & Fishkill Road would draw interest, and I thought I was making a good thing by the exchange.

Q. So your motive in going to Hartford was simply to exchange the coupons of the city of Hartford for the coupons of the Hartford, Providence & Fishkill, with a view of getting the difference of interest between the two? Was that your sole motive in going there?

A. Yes, sir.

Q. You had no other motive?

A. I had no other motive; I thought I was making a good trade.

Q. The city of Hartford would have paid those coupons at any time on presentation?

A. I had no reason to doubt they would.

274 Q. You go down with coupons that are overdue to the city of Hartford, which is ready to pay you the cash and exchange them for ten years' overdue coupons of the Hartford, Providence & Fishkill, as matter of profit to yourself? Is that your whole explanation?

A. I didn't think I could lose anything by the exchange; certainly I was getting seven per cent. coupons for six per cent. coupons.

Q. When was it you made that exchange?

A. I don't know whether in 1868 or '69. I think in 1868.

Q. The very time you were borrowing money of this corporation, were you not?

A. Very likely I may have done so.

Q. And very large amounts. The Hartford, Providence and Fishkill debts were assumed to be paid by the Boston, Hartford & Erie Railroad Company, were they not, under the contract?

A. I don't know; I never read the contract. I supposed they assumed the account, the Sprague account.

Q. But not the coupons?

A. I did not know that they ever paid any coupons of the Hartford, Providence & Fishkill Road. I thought the trustees of the corporation paid them. I was not aware that the Boston, Hartford & Erie paid the coupons after I went into the office.

Q. Did you present those coupons for payment that you got from Hartford?

A. No, sir.

Q. You kept them until when?

A. I think they were in the package that was presented the other day. I presume they were.

Q. Why didn't you present them for payment?

A. For the same reason that I did not present the city of Providence.

Q. The same reasons applied to those?

A. Yes, sir.

Q. The exchange of the coupons at Hartford was not in the interest of the Boston, Hartford & Erie Railroad, but in your own interest?

A. It was not for the Boston & Hartford Road; I think it might be in the interest of it.

Q. What do you mean by in the interest of it?

A. I was in the Boston, Hartford & Erie Railroad as director, and I didn't think it would be anything but for the interest of the corporation to do anything of that kind and get them into possession.

Q. Of whom?

A. In my possession. I was not an enemy of the Boston, Hartford & Erie. I did not get them into my possession for the Boston, Hartford & Erie. I had no doubt but what the Hartford & Erie would assume that account and pay the coupons.

275 Q. Was the city of Hartford an enemy?

A. No, sir.

Q. They had kept these coupons ten years?

A. Yes, sir.

Q. Had they taken any hostile proceedings?

A. No, sir.

Q. Didn't you and Mr. Farwell do that for the Boston, Hartford & Erie Railroad, in fact?

A. Didn't I?

Q. Yes, sir.

A. No, sir. I don't like to sit here to be catechised in this way, and have you impute my motives about these coupons.

Q. There was a sinking-fund held by the trustees of the Providence, Hartford & Fishkill Railroad against the mortgage?

A. It was told so.

Q. Are you aware how much, or what, the amount of that was?

A. No, sir.

Q. It was over $200,000?

A. I think so.

Q. Is there any reason why you should not have gone and got the money out of the hands of those trustees?

A. I could not see any reason why the trustees had not enough money to pay; they said otherwise.

Q. Why didn't you go and get the money?

A. Mr. Bartholomew always pretended they hadn't any money.

Q. Didn't Mr. Bartholomew make a yearly return, in which he stated this sinking-fund to the corporation?

A. I don't think he ever made a yearly return to the corporation. He

might have done so, but I don't think I saw them every year; I don't think I have seen one since 1866 or 1867.

Q. Did Mr. Bartholomew say to you that there was not any sinking-fund to any amount in his hands?

A. No, sir; I don't know that he had control of the sinking-fund; I don't think he did. I don't think the sinking-fund could be applied to the coupons; that is my impression, and the legal advice I had.

Q. You say you expected the Boston, Hartford & Erie Road would pay this debt?

A. I expected to be re-imbursed by the Boston, Hartford & Erie Road. I had no doubt about that at the time.

Q. When you discontinued your suit against the Hartford, Providence & Fishkill Road, and had the $84,000 coupons to rely upon, did you look to the Boston, Hartford & Erie Railroad Company for the rest of the debt?

276 A. I supposed the Boston, Hartford & Erie would be able to pay all their indebtedness.

Q. Did you demand it of them?

A. No, sir; I did not see any time that they were in a condition to pay it.

Q. When you were borrowing millions of dollars of them?

A. Didn't I state yesterday that we had no right to apply that money to that account?

Q. You did apply it to debts?

A. I didn't see any time when the corporation was in a condition to pay this indebtedness.

Q. How many millions did this corporation get from Massachusetts?

A. Three millions.

Q. And never had any money to pay this $135,000 back to you?

A. They didn't seem to have; they would not have failed if they had plenty of money.

Q. Didn't the road pay its debts?

A. You ought to know. I suppose if they had been paid the road would not have failed.

Q. You presented an account against the Boston, Hartford & Erie, but didn't make your claim upon them on account of this transaction. Why didn't you make that claim when you presented this account?

A. That never was charged to the Boston, Hartford & Erie Railroad.

Q. You didn't look to the Boston, Hartford & Erie Railroad?

A. I didn't look to them after the road failed; but before they failed I supposed they would pay it.

Q. You didn't claim it against them?

A. Not after the road failed.

Q. Did you before the road failed?

A. I considered it good.

Q. Did you before it failed?

A. I didn't demand it of them.

Q. You understood they were to pay it?

A. Yes, sir.

Q. When you made up your account against them, why didn't you make a claim against them? You had no claim against the Hartford, Providence & Fishkill Railroad except the $84,000 coupons. That case had been disposed of; it was outlawed. I want you to understand precisely what the point is I wish to make, so that you can give an intelligent answer to it. The case against the Providence, Hartford & Fish-

kill Railroad had been discontinued, and one of them entirely settled?

A. That I don't know.

Q. It had been discontinued; it had been standing some ten years after the last item. You had $84,000 of coupons, which you say you are entitled to hold. You say that you expected the Boston, Hartford & Erie to pay you that debt?

277 A. Why should I not expect it?

Q. Follow me. Now, why didn't you when you made a settlement with the Boston, Hartford & Erie Railroad Company carry that into the account?

A. And take a note for it after the road had failed?

Q. Why didn't you claim it against them?

A. Because it was not charged against the Boston, Hartford & Erie Railroad Company, and [did] not go into their account. It never entered into the account of the Boston, Hartford & Erie Railroad Company.

Q. If the stock was put as collateral security, it must have been put as collateral security to some debt. What debt was it put as collateral to?

A. The stock stands on the books of A. G. Farwell & Company as against Henry N. Farwell.

Q. No matter how it stands on the books, unless you put the books in.

A. I suppose the book-keepers have a certain way of keeping the books.

The MASTER. You can state very easily what you claim that it stood as collateral for.

WITNESS. It was the debt of the Sprague account and the other two executions, as I stated yesterday.

Q. When you went to Providence to take up this claim of the Spragues, did you do it in correspondence with any of the officers of the corporation, or upon conference with them?

A. No, I don't know that I did, sir; not the day that I went down.

Q. Did you know that the Boston, Hartford & Erie Railroad Company were the successors of the Hartford, Providence & Fishkill Railroad Company?

Mr. WIGGINS. That is a question of law entirely.

The MASTER. I don't see any objection to that form of the inquiry. It is a very general inquiry. They do not want to go into the particulars of it. I suppose it is only an approximation to some other point.

A. I was told so, sir. I think that they had purchased the Hartford, Providence & Fishkill Railroad.

Q. And assumed the debts?

A. And they were to assume the debts. I believe they set aside stock on that account; it was so stated. I was not an officer of the road at that time, and knew nothing about the affairs of the road.

Q. You say you credited the proceeds of the sale of those 7,349 shares to the amount, I think you said, of $54,000?

A. No, I didn't say so.

Q. What did you credit it to?

A. I don't think it is credited to any one account, except to Henry N. Farwell, trustee, stock account. It stands there as proceeds.

278 JOHN C. WATSON sworn.

Mr. WIGGINS. I want to put in the full record of this Ellis suit Your honor's suggestion in regard to the extent of the power of these

receivers has suggested to us that perhaps it would be well for your honor to have the entire record, and we have sent over to the clerk's office for it.

The MASTER. You can put that in at any time before the argument, as it is matter of record.

Q. (By Mr. Wiggins.) State whether or not you are one of the firm of George W. Long & Company.

A. I am.

Q. State whether or not you at any time received from Henry N. Farwell any coupons of the city of Providence; and if so, when.

A. I received $15,000 city of Providence coupons of Mr. Farwell early in November, '70. I think it was early in November.

Q. Now won't you state to the court how you came to get them, or have them; for what purpose were they delivered to you? State all the facts in connection with them.

A. Well, I can state briefly that at the time I received these coupons Mr. Farwell owed my firm a large amount of money, and I was desirous of having additional security for the money; and I went to him and asked him for something more to secure me, and he gave me these coupons and told me that they were good and I could collect them.

Q. He gave them to you as security, or in payment of the claim if they were collected. If you received the money on those coupons was it to be treated as payment of their account to you?

A. It was.

Q. I want you to state to the court whether or not at the time you received them you had any knowledge or notice of how Mr. Farwell had them and held them, or had any notice or reason to suppose, at the time you took them, that they did not belong to him, or that he had no right to deliver them to you; and whether you took them in good faith, and for the consideration you have mentioned.

A. When I received them I took them to be applied to his account. I had no knowledge where they came from or how he became possessed of them, and I received them in perfect good faith. I did not make any inquiries. I had no doubt of it whatever. I took the coupons to Providence and demanded payment.

Q. How soon after you received them?

A. I think within three days. I won't be positive. It was near the time; as soon as it was convenient for me to leave. I was very busy at the time. I took them to the city of Providence and demanded
279 payment of the treasurer. Payment was refused. I came back, and at once, the next day I think, gave them to Mr. Holmes to collect. I took steps to collect them.

Cross-examination:

Q. (By Mr. Brooks.) You were present when the case of Ellis vs. The Hartford, Providence and Fishkill Railroad Company was before the court, and when the decree was made, were you not?

A. I can't say whether I was or not. I was in court a great many times when the Ellis suit was up; I can't tell any particular time.

Q. You read the decree after it was issued. It was published in the newspapers, wasn't it?

A. I suppose it was; I didn't read it. I never read anything of that kind, because I can't understand it. I won't say that I did not glance over it, but then I didn't read it particularly.

Q. When those $15,000 of coupons were placed in your hands they were overdue some ten years, weren't they?

A. Yes, sir.

Q. Did you make any inquiries on that account?

A. No, sir.

Q. Wasn't it a matter of some curiosity to you how those came to be ten years due?

A. Not in the slightest degree, sir.

Q. Notwithstanding they had been ten years overdue?

A. No, sir. We very often have coupons overdue. We have got some now. We buy them, and are in the habit of buying them.

Q. Coupons overdue against responsible parties, like the city of Providence?

A. Yes, sir.

Q. Many of them ten years old?

A. Yes, sir. We have got one now ten years old that I took the other day.

Q. One single one?

A. I would take of the same party a great many more.

Q. Without any inquiry why they had not been collected?

A. Yes, sir. They are usually estimated as cash. A coupon of a railroad or other corporation of good credit is estimated as good.

Q. It may be good, but the question is whether the fact that a coupon had not been collected for ten years did not excite your curiosity to inquire why it had not been collected?

A. No, sir.

Q. Although there were $15,000 of them?

A. No, sir; it did not.

Q. Against the city of Providence you had no curiosity, and did not inquire why they had not been collected?

280 A. No, I had no reason to inquire. I was told they were good. Besides, the city of Providence was good. I had no doubt they would be paid.

Q. You say you didn't know where they came from?

A. No, sir; I didn't.

Q. Nor where Mr. Farwell got them?

A. No, sir; I didn't.

Q. Never heard?

A. I knew nothing about them until the Providence trial. He gave them to us as security for what he owed us, to be applied to our account. He told me they were good.

Q. Did you pass any paper?

A. No, sir.

Q. Did you enter it upon your books?

A. No, sir.

Q. There is no credit of the coupons?

A. No, sir; there is nothing to credit until we make a collection.

Q. There is nothing but simply a delivery of the coupons over to you?

A. Yes, sir; the same as any other collateral might be handed to me, and no entry made until it was finally settled.

Q. Did he say it was collateral?

A. Certainly.

Q. As matter of fact he used the word collateral?

A. I don't say that; but, as I testified here, he told me to take them; he told me they were perfectly good, to take them and collect them and give him credit for the amount. I took them as collateral.

Q. This debt to which they were to be applied was a debt due on account?

A. Yes, sir.
Q. How long had it been standing?
A. I can't say, sir.
Q. You mean by that a year or two?
A. Oh, no. I can tell by looking at my books.
Q. Had it been standing since 1869?
A. Oh, yes, sir; I think it had.
Q. Since July, 1868?
A. I can't tell the precise time when the account commenced against Mr. Farwell; but my impression is he owed us money the latter part of 1869. I don't want to be positive on that.
Q. How came you to take this collateral at this particular time? This account had been standing for some years?
281 A. No, it had not been standing for some years. Why, everything in connection with the Hartford & Erie Railroad had depreciated, and there was a sort of scare on State street, and I suppose I got a little scared among other people, and I wanted a little more security, that was all.
Q. The corporation failed in December, 1869?
A. Yes, sir; but the securities did not depreciate very rapidly then, compared to what they did subsequently.
Q. Then you want it understood that you took these coupons when the securities of the road first declined?
A. No; I don't know as this decline in the market had any application in my mind to the taking of those coupons. I only know that Mr. Farwell owed us money, and I was desirous of having further security. It was a matter of business with me entirely.
Q. There was nothing more than simply placing these coupons in your hands for collection, the proceeds to be applied to paying the debt?
A. Not that I am aware of.
Q. That was the whole of it?
A. Yes, sir; I considered them mine when I received them, and have ever since: never had a doubt but what they were mine.
Q. (By Mr. Thurston.) But that was the precise transaction, as I understand it, as you have explained?
A. That is the way I understand it.
Q. Did you allow Mr. Farwell any price whatsoever for those coupons?
A. No, sir.
Q. Nor was there any entry made upon your books concerning them?
A. There couldn't be any entry made upon my books, from the nature of my business.
Q. There could have been if you had allowed him twenty cents on the dollar; purchased them absolutely?
A. No, it was not a purchase outright. I took them as collateral security, with authority to collect them, the proceeds to be applied to that account.
(Petitioners admitted that Mr. George W. Long, if called, would testify as Mr. Watson had testified in regard to his knowledge of the Ellis suit, and deny all knowledge of the antecedent history of the coupons.)
(Defence rested.)

282 PLAINTIFFS' REBUTTAL.

Mr. BROOKS. I have a paper here which I propose to put in, showing in what capacity Mr. Graves was acting at the time of his negotiation

at Providence. Here is his bill, in which he charges, "May 21 and 22, 1868. To expenses to Providence, Sprague, $7.50."

Mr. WIGGINS. Do you put that in as evidence to show the capacity in which he purchased this claim for Mr. Farwell, and the capacity in which he acted in the transaction with the Spragues?

Mr. BROOKS. Yes, sir.

Mr. WIGGINS. We object to it.

Mr. HOLMES. Do you put it in to contradict Mr. Graves?

Mr. BROOKS. He is a witness, and we put it in as contradicting him.

Mr. WIGGINS. It is incompetent to show any such fact. In the first place, it is not the best evidence; it is not any evidence, in fact.

Mr. HOLMES. We understood him to admit that he was counsel for the Boston, Hartford & Erie at that time.

Mr. THURSTON. Did you understand him that in making this purchase of the Spragues he was acting for the Boston, Hartford & Erie?

Mr. WIGGINS. No, sir.

Mr. THURSTON. And charged his expenses at this very time to the company?

Mr. WIGGINS. No, sir.

Mr. THURSTON. Then we shall have to offer proof on the subject.

The MASTER. I should not think the account itself would be evidence, but if you wish to inquire of him in regard to it, I do not see that there is any objection to that.

THOMAS E. GRAVES recalled:

Q. (By Mr. Brooks) Is that a bill you rendered to the corporation?

A. This is in my handwriting, sir.

Q. Is that for services in the case of the settlement, or whatever you call it, of the Spragues' claim?

A. There is no such entry here.

Q. What is it?

A. There is an entry thus—I will read the whole bill;

"Boston, Hartford & Erie Railroad Company in account T. E. Graves, Dr. 1868, May 4 to 10, to expenses, &c., Providence, Hartford, New York, Newburg $73 40

283 "10 to 12, do. Providence, Judge Bradley, (which means that I went to see Judge Bradley) 5 97

"14th, expenses to Providence, Mason, (I went to see a Mr. Mason) 5 50

"18th and 19th, expenses to Putnam, &c. (Mr. Parks paid balance) 2 50

"21st and 22d, Providence, Sprague, (that meant that I went to see Sprague) 7 20

"22d and 23d, expenses to Putnam, Worcester, night 7 70

"25th to 29th, Hartford, New Haven, Providence, &c 38 75

"Salary 583 33

"Check, $112.00.

"Received payment, June 1, 1868.

"THO'S E. GRAVES."

I was in the employment of the railroad company by a salary. They paid me every month $583.33, and paid my expenses. As I stated, I have got no charge to Mr. Farwell. I went down under an arrangement with Mr. Farwell and Mr. Eldridge, president of the road, to do this business for Mr. Farwell, because it was in the interest and for the

benefit of the railroad company. That is all I have to say about it. That is an account of my expenses.

Q. You made no charge to Mr. Farwell?

A. I made no charge to Mr. Farwell whatever. Under an arrangement with the president, I went for the purpose of aiding Mr. Farwell to make this purchase.

Q. (By Mr. Thurston.) You say under an arrangement with the president; did you consult with Mr. Eldridge about that?

A. Yes, sir; as I stated before, I consulted with him before we went.

Q. Are you sure about that?

A. I am. We talked it all over, and there was a specific agreement about these 7,349 shares.

Q. Wasn't Mr. Eldridge absent at New York during all this time?

A. Mr. Eldridge was at home from time to time, and I was in New York about as much as he was.

The MASTER. You have been all over this once. It is hardly worth while to repeat it.

(Adjourned to Thursday at 10 a. m.)

THURSDAY, *Oct.* 19.

The hearing was resumed at 10 o'clock.

Mr. HOLMES. We should like to understand the extent of your honor's ruling yesterday. We do not understand whether the ruling extends to all the evidence to show that Mr. Farwell received money from the corporation or not.

The MASTER. No; I think it is proper for them to show that
284 he had large sums of money, because that is a mode of raising an inference that he either was paid or ought to have paid himself. That is competent on the general ground. But any evidence to show that he was largely indebted to the company, or is now largely indebted to the company, is excluded by the condition of the reference.

Mr. WIGGINS. Or at any time while the coupons were in his possession?

The MASTER. Well, I suppose this exclusion refers to the present time, to the time of the reference.

Mr. WIGGINS. We did not understand your honor's ruling yesterday. We supposed it was the question of general indebtedness.

The MASTER. I don't know that it is very important. I ruled out the evidence on the ground that it was going into the very question which the court had excluded. They will fix their own construction upon that.

Mr. WIGGINS. Your honor will recollect that I asked Mr. Farwell the question whether all the money that he or his firm had ever borrowed from the Boston, Hartford & Erie Railroad Company had been paid, and your honor ruled it out upon the ground that the evidence was excluded; whereupon I withdrew it.

The MASTER. That would be the very inquiry whether he is indebted to them.

Mr. THURSTON. That would give us the right to sift these books.

Mr. WIGGINS. They have put in testimony already—and, as I understand the claim, they are going to agree upon it as if it was in, and I understand your honor to say that it is in—that because Mr. Farwell had, during the time he held these coupons, or at any time since he had the possession of them, large sums of money, this two millions of dollars, or certain portions of it, it is to be inferred that he paid himself the amount of this Sprague claim. But if it is left there, we are placed in a position where we ought not to be left, because we can show that

all that money and all the other money which he ever received from this company has been repaid—returned.

The MASTER. You cannot show that without going to that very question which is excluded.

Mr. WIGGINS. Then the other should be excluded, should it not?

The MASTER. No; the other is with a view to show that he had the means of paying this particular claim, and that he should have done it. That has nothing to do with whether he afterwards paid this money back to the company. Their argument goes upon the ground that having this in his hand, and having this claim against them, he should have appropriated it to his own debt.

Mr. WIGGINS. Leaving entirely out of consideration the fact whether he ever paid it back or not?

The MASTER. Yes, sir. No matter whether he ever paid it back or not. They say he had the means, and he ought to have applied it to his own debt. I have no objection to saying that I ruled out that question, if you wish to have it appear that you offered the evidence.

285 Mr. WIGGINS. Yes, sir.

Mr. BROOKS. I understand your honor to rule out the fact that the claims which were taken up by the Hartford, Providence & Fishkill Railroad Company were assigned in blank or assigned to other parties, to hold for the corporation, as not affecting this particular assignment.

The MASTER. Yes, sir; where other parties, other officers, took claims, the fact that they had them assigned is not anything that would bind him unless you show that he knew it. If he knew that that was the practice, you may show it if you can bring the knowledge to him; but what was due without his knowledge I think would not affect him. That is what I ruled.

Mr. HOLMES. That would apply to the evidence in regard to the agreement or understanding at the Allyn House, Hartford, that the claim should be assigned to individuals. Mr. Farwell was not present.

The MASTER. Whatever was done without his knowledge was not binding upon him. If he knew it was the general practice, did it himself, or knew others were doing it, that is perfectly competent; but the fact that others did it without his knowledge ought not to affect him, because it would be res inter alios acta. I think I shall be able to state that correctly. I should like to have the counsel give me in writing, at the argument, every point which they wish me to report upon as to the competency of the evidence, and when they want a fact found, indicate the particular fact. I may not be able to comply with all the requests, but as far as I can, of course I shall.

Mr. BROOKS. We have put in evidence, in regard to this, the contract of August 28, 1863, and of Mr. Farwell's knowledge of it. We do not understand this ruling to exclude that contract, or Mr. Farwell's knowledge of the contents of it. We shall argue that he knew the contents of that contract, and that provides, in regard to the assignments, that they should not be to the corporation.

The MASTER. That is in, of course, and open to argument by way of inference. That occurred to me at the time this question was raised, but of course I did not suggest it. How much he might know from the contract itself I cannot say. I do not know that there is any direct evidence that he ever read the contract.

Mr. WIGGINS. That has reference to the purchase of claims by the company.

Mr. Brooks presented, at the request of defendants' counsel, a printed

copy of the order for the transfer of the property by the receivers to the trustees, (marked X[10].)

Defendants put in the following documents:

286 COMMONWEALTH OF MASSACHUSETTS,
Supreme Judicial Court, Suffolk, ss:

GEORGE ELLIS ET AL.
vs.
BOSTON, HARTFORD & ERIE RAILROAD COMPANY.

Whereas James W. Converse, Geo. M. Bartholomew, J. Grahame Gardiner, and Henry L. Hallett are the receivers of the roads, railways, property, and franchises of the Boston, Hartford & Erie Railroad Company, duly appointed as such by the supreme judicial court of Massachusetts, the supreme court of Rhode Island, and the superior court of Connecticut, (except the said Hallett, who has been so appointed in said Rhode Island only,) in suits pending in said courts, wherein George Ellis, with another or others, is party plaintiff, and said company is party defendant;

And whereas William T. Hart, George Talbot Olyphant, and Charles P. Clark are the trustees by due appointment and succession, under a mortgage made by said company to Robert H. Berdell and others, dated March 19, 1866, and have been confirmed as such by said courts;

And whereas by decrees passed by said courts, respectively, the said receivers have been ordered and directed to deliver over into the possession of said trustees all the roads, railways, property, and franchise of said company, held by them under the decrees of said courts, respectively, upon the payment of the sums of money and the giving of the security hereinafter mentioned;

And whereas said security has been given, and the amount of money to be paid by said decrees to the parties in said cause has been paid, and the only remaining amount by said decrees to be paid is the following:

Now, therefore, we, the said receivers, hereby acknowledge that we have this day received of the said Hart, Olyphant, and Clark, trustees as aforesaid, the sum of one hundred thousand dollars ($100,000,) which, with the sum of forty-eight thousand five hundred and thirty-three dollars, ($48,533,) received by us to our satisfaction from the earnings of the road since the date of the master's report, upon which said decrees were founded, makes the sum of one hundred and forty-eight thousand five hundred and thirty-three dollars, ($148,533,) the amount to be paid us under said decrees for the purposes and upon the trusts set forth in said decrees.

And we do hereby, in pursuance of the said several decrees of said courts, us thereto enabling and directing, deliver into the possession and control of the said Hart, Olyphant, and Clark, trustees as aforesaid, all the roads, railways, property, and franchises which we, the said receivers, have, by virtue of the decrees of said courts in said causes, in our hands or possession, or under our management or control, as such receivers.

Witness our hands this seventeenth day of August, 1871.

J. W. CONVERSE,
GEO. M. BARTHOLOMEW,
J. GRAHAME GARDINER,
HENRY L. HALLETT,
Receivers.

287 SUPREME JUDICIAL COURT, *Suffolk, ss:*

GEORGE ELLIS ET AL.
vs.
BOSTON, HARTFORD & ERIE RAILROAD COMPANY.

To the honorable the justices of the supreme judicial court:

Respectfully represent unto your honors William T. Hart, George Talbot Olyphant, and Charles P. Clark, the trustees by due appointment, succession, and confirmation under the mortgage made by said railroad company to Robert H. Berdell and others, March nineteenth, eighteen hundred and sixty-six:

That pursuant to the decree of this honorable court made on the ninth day of May last, and other subsequent decrees of this court, and pursuant to like decrees made by the supreme court of Rhode Island, the superior court of Connecticut, and the supreme court of New York, in causes pending in said courts, respectively, wherein are the same parties plaintiff and defendant, and for and upon the same cause of action, the receivers heretofore appointed in this cause, on the seventeenth day of August last, delivered over unto them, the said trustees, for the purposes and upon the trusts set forth in said decrees, directing and allowing the same, all and singular, the roads, railways, property, and franchises which they the said receivers on said day had in their hands or possession, or under their management or control as such receivers.

And said trustees received the same from said receivers; and thereupon and thereafterwards, pursuant to the provisions of said indenture of mortgage and of the several decrees aforesaid, and of all and every other power and authority them thereto enabling, entered upon and took possession of all and singular the roads, railways, property, franchises and estate conveyed and mortgaged by said indenture of mortgage, for default in the payment of interest secured by said mortgage, (said default having continued for six months and more before their having taken possession as aforesaid,) for the purpose of foreclosing said mortgage for said default. And they did thereafterwards, to wit, on the sixteenth day of September last, pursuant to the terms of said mortgage, file in the offices of the secretaries of state of the States of Massachusetts, Rhode Island, Connecticut, and New York a written notice, acknowledged before a notary public, that they had taken possession of said mortgaged property, franchises, and estate for default in the payment as aforesaid, and of their purpose to foreclose said mortgage for said default; a copy of which notice is hereto annexed, and marked Exhibit M, to which said trustees crave leave to refer.

Wherefore said trustees represent to this honorable court that they are, pursuant to due authority and power, in possession of all the roads, railways, property, franchises, and estate conveyed by said mortgage, according to the terms and provisions of said mortgage and of said decrees, and for the purpose of foreclosing said mortgage according to the provisions of said decrees and of said mortgage for said default.

288 Wherefore they pray this honorable court that such orders and decrees may be entered in the premises, and such record hereof made, as to your honors may seem meet.

WM. T. HART,
GEO. TALBOT OLYPHANT,
CHARLES P. CLARK,
Trustees.

Mr. HOLMES. Then follows a printed copy of the certificate filed by them, and upon those papers this order was passed:

SUPREME JUDICIAL COURT, *Suffolk, ss:*

GEORGE ELLIS ET AL.
vs.
BOSTON, HARTFORD & ERIE RAILROAD COMPANY. } In equity.

OCTOBER 13, 1871.

And now, upon presentation to the court of the instrument of delivery, and the report of the trustees, hereto annexed, it is ordered that the same be entered of record and filed in the cause.

By the court.

GEO. C. WILDE, *Clerk.*

Adjourned to Monday, at ten o'clock.

During the closing argument for the petitioners, while the counsel was commenting on the $225,000 remaining of the amount received from Mr. Eldridge, the respondent's counsel, with the consent of the petitioners, put in the case the following memorandum in pencil in the latter part of the "borrow and loan book" of A. G. Farwell & Company, to wit:

1868.	March 19, cr. by amount received on deposit	$400,000
	March 31, dr. draft March 28	175,000
		225,000
	April 6	100,000
		125,000
	May 7, cr. by amount received	100,000
		$225,000

Cr. Boston, Hartford & Erie Railroad, Nov. 30, 1869.

289 EXHIBITS.

EXHIBIT A.

This is a copy of the record of the case of Byron Sprague, William Sprague, and Amasa Sprague, copartners under the firm of A. & W. Sprague, vs. The Hartford, Providence & Fishkill Railroad Company, in the supreme court of Rhode Island, consisting of—

Summons dated December 31, 1857, returnable to the March term then next at Providence.

Officer's returns of service made January 1, 1858.

Declaration upon the common money counts, dated December 31, 1857, and filed at March term then next.

Defendants' plea in abatement, filed at said March term.

Second plea of the defendants, filed September term, 1858.

Extract from record of judgment, as follows:

"THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Providence, ss:

"At the supreme court of said State, begun and holden at Providence, within and for the county of Providence, on the fourth Monday

of March, in the year of our Lord one thousand eight hundred and sixty-eight:

"A. & W. SPRAGUE
"*vs.*
"HARTFORD, PROVIDENCE & FISHKILL RAILroad Company. } 3310. Settled."

And the docket entries as follows:

Filed March 10, 1858. J. A. G., clerk.

M. T. 1858. Heard, and plea sustained. Plaintiff has leave to
290 amend his writ, and officer to amend his return by confining same to writ of summons only, and continued. S. T. 1858, 34th day, defendants waive right to 2d trial, and continued.

1859 M. T., 80th day, cont'd.
" S. T., 6th " "
1860 M. T., 10th " "
" S. T., 4th " "
1861 M. T., 9th " "
" S. T., 3d " " nisi.
1862 M. T., 10th " " "
" S. T., 4th " "
1863 M. T., 16th " "
" S. T., 60th " "
1864 M. T., 50th " "
" S. T., 67th " "
1865 M. T., 14th " "
" O. T., 81st " "
1866 M. T., 65th " "
" O. T., 21st " "
1867 M. T., 57th " "
" O. T., 92d " "
1868 M. T., 48th " " 63d.
Cont'ce off, and settled.

Entry of "settled" was made June 18, 1868.

This exhibit may be referred to and used by either party.

EXHIBIT B.

The Western Union Telegraph Company.

Dated BOSTON, 22, 1868.

Received at Providence May 22.

To SAMUEL CURREY:

Will settle at one hundred and thirty-three thousand (133,000) dollars, cash. Answer early in morning or come up here.

H. S. BARRY,
Treasurer B., H. & E. R. R. Co.

291 EXHIBIT C.

The Newport Telegraph Company.

Dated PROVIDENCE, 21, 1868.

Received at Newport, 21.

To SAMUEL CURREY, court-house:

How shall we address you, by mail? Reply at once.

A. & W. SPRAGUE,
Manufacturing Company.

EXHIBIT D.

OFFICE OF THE A. & W. SPRAGUE MANUFACTURING COMPANY,
No. 3 Exchange Place, Providence, May 21, 1868.

Hon. SAMUEL CURREY, *Newport, R. I.:*

DEAR SIR: I have placed before Mr. Amasa Sprague last evening's conversation.

To close the matter he will accept ($135,000) one hundred and thirty-five thousand dollars, in cash.

You will please communicate with your principals, and advise Mr. S. on receipt of their reply.

Respectfully, yours,

CHARLES GREEN.

This proposition for immediate acceptance.

G.

EXHIBIT F.

BOSTON, *May* 12, 1868.

Hon. S. CURREY:

DEAR SIR: I am authorized by Hon. John S. Eldridge and Henry N. Farwell, esq., president and vice-president, to empower you to close a bargain with Messrs. A. & W. Sprague for the purchase by them of Messrs. Sprague of their claims *vs.* the late Hartford, Providence & Fishkill Railroad Company, as shown in the item of account rendered to the Boston, Hartford & Erie Railroad Company.

You are authorized to agree to give $130,000 and 7 per cent. interest from the day of the interview between Gov. Sprague and Mr.
292 Farwell and myself, last fall, to the day of the transfer, and I will give the notes of Messrs. Farwell & Eldridge, one-half amount payable in four and one-half in six months from said date of transfer.

The parties are ready to take transfer at the convenience of the Messrs. Sprague.

As to ability of Messrs. Eldridge and Farwell, please refer to Benjamin E. Bates, president of Bank of Commerce, or Joseph Bardwell, of firm of F. Skinner & Company.

Yours, &c.,

THOMAS E. GRAVES.

EXHIBIT G.

54 CITY EXCHANGE, *May* 23, 1868.

S. CURREY, Esq.:

DEAR SIR: We propose to be in Providence Thursday next, at 1 p. m., and pay over to Messrs. Sprague.

Please have all claims assigned to H. N. Farwell, and right to collect in name of Sprague, &c., so we can close up.

I am off Monday to New Haven. If any change of time, telegraph to me, care John S. Graves, New Haven.

Y'rs,

GRAVES.

(Exhibit H, on page 252.)

293 DR.

Hartford, Providence & Fishkill Railroad Company,

1856.					
Nov.	15.	To cash	$1,000		
	17.	"	500		
	26.	"	700		
Dec.	3.	"	1,600		
	8.	" net of drafts	9,666	66	
	15.	" "	4,833	33	
	29.	" "	4,833	33	
	30.	"	18,000		See opposite.
	31.	"	10,650		
1857.					
Jan.	5.	" net of draft	4,834	17	
	10.	"	3,500		
	12.	" net of drafts	4,834	17	
	26.	" "	4,834	17	
	27.	"	200		
Feb.	2.	" net of draft	4,834	17	
	12.	"	4,834	17	
March	2.	" net of draft	4,831	67	
	9.	"	4,831	67	
	16.	"	6,331	67	
	"	tickets ret'd	540		
	"	memo. check	4,276	88	
	30.	cash	4,831	67	
April	1.	1½ gallons oil	1	50	
	11.	cash	3,200		
	17.	"	4,832	50	
May	6.	"	4,831	67	
	18.	"	4,831	67	
June	30.	balance of interest account to date	547	53	
	"	their note given up due May 1–4, 1857	40,000		
	"	interest on same to date	380		
					$163,922 60

294 *In account with A. & W. Sprague.*

CR.

1856.					
Nov.	18.	By cash	$500		
	19.	"	1,000		
	28.	"	700		
Dec.	1.	railroad tickets, (200)	900		
	2.	" (300)	1,350		
	4.	" (500)	2,250		
	5.	cash	1,600		
	15.	"	3,791	66	
	18.	"	3,426	33	
	26.	"	2,582		
	27.	"	2,000		
	31.	transfer of Dr. entries Dec. 30, 31, to coupon account	28,650	00	See opposite.
1857.					
Jan.	3.	cash	5,333	33	
	6.	"	2,200		
	17.	100 railroad tickets	88		
	21.	cash	2,258		
Feb.	2.	"	200		
	"	memorandum check	469	10	
Jan.	31.	100 railroad tickets	116		
Feb.	14.	cash	1,441	24	
	23.	"	5,400		
March	2.	"	4,831	67	
	6.	101 railroad tickets	88	88	
	9.	100 "	24		

	10.	cash	5,600		
April	2.	"	10,000		
	"	300 railroad tickets	228		
	17.	cash	3,800		
	23.	100 railroad tickets	88		
May	2.	cash	5,000		
	6.	"	1	50	
	12.	freight	128	22	
	18.	cash	7,000		
	19.	200 railroad tickets	204		
June	1.	cash	10 000		
	23.	120 railroad tickets	106	40	
	27.	balance of freight	202	34	
	30.	cash	22,363	93	
	"	balance to their debit in new account	28,000		
					$163,922 60

295 DR.

Hartford, Providence and Fishkill Railroad Company,

1857.					
June	30.	To cash balance brought forward	$28,000		
	"	" sent Hoyt, Tillinghast & Co $10,000	15,000		
	"	" " " Connecticut River Banking Co. 5,000			
July	1.	cash paid for coupons	10,410		
	2.	cash sent Hoyt, Tillinghast & Co 6,000	11,000		
	"	" " Connecticut River Banking Co. 5,000			
	3.	" " Hoyt, Tillinghast & Co. 3,600	3,950		
	"	" paid for coupons 350			
	6.	cash	2,200		
	"	balance of coupon account transferred	465	50	
	"	cash paid for coupons	140		
	7.	"	5,000		
	9.	cash paid for coupons	1,645		
	10.	overcharge	66	40	
	14.	cash paid for coupons $857 50	4,957	50	
	28.	" " "	245		
Aug.	10.	draft on New York, due February 13, 1858	5,000		
	17.	" " " " 20, "	2,500		
	"	overcharge on freight	91	44	
Sept.	2.	draft on New York due March 3, 1858	2,500		
	"	138 tons coal and insurance	544	37	
	4.	overcharge on freight	49	76	
	8.	$86\frac{9}{10}$ tons coal, freight, insurance	453	04	
	15.	draft on New York due March 17, 1858	2,500		
	22.	cash	700		
	30.	balance of interest account to date	667	52	
					$98,085 53
Sept.	30.	To balance account forward as cash	46,859	69	
	"	" coupon account	465	50	
Oct.	3.	draft on New York due April 4, 1858	2,500		
	6.	" " " " 8, "	5,000		
	10.	overcharge on freight	87	12	
	13.	draft on New York due April 15, 1858	2,500		
	19.	cash for ten coupons	350		
	27.	draft on New York due April 29, 1858	5,000		
	30.	one coupon, cash paid	6	13	
Nov.	5.	memorandum check	38	47	
	9.	draft on Philadelphia, due May 12, 1858	10,000		
	16.	overcharge on freight	66	15	
	18.	memorandum check for tickets	204		
Dec.	14.	two coupons, cash paid	60		
		Forward	$73,137	06	

296 *In account with A. & W. Sprague.*

CR.

1857.					
July	6.	By cash	$4,276	88	
	8.	freight	114	30	
	"	200 tickets	204		
	23.	cash	4,307	16	
	28.	70 tickets	57	20	
Aug.	4.	225 "	218		
	5.	cash	5,000		
	10.	"	5,000		
	15.	"	3,000		
	21.	"	6,500		
	27.	"	5,000		
Sept.	3.	"	5,000		
Aug.	31.	250 tickets	250		
Sept.	7.	cash	2,500		
	10.	Chapman & Hyde's acc	1,000		
	"	" " "	1,200		
	"	" " "	1,200		
	"	" " "	1,000		
	21.	cash	2,858	80	
	17.	100 tickets	74		
	25.	cash	2,000		
	30.	bal. of coupon acc. forward	465	50	
	"	" " " "	46,859	69	
					$98,085 53
Oct.	2.	By cash	$2,500		
	9.	"	5,000		
	13.	"	4,500		
	12.	200 tickets	140		
	16.	cash	723	07	
	27.	"	9,000		
	1.	Woods	38	47	
	23.	100 tickets	88		
	28.	100 "	116		
Nov.	18.	200 "	204		
	25.	cash	9,000		
Dec.	10.	Chapman & Hyde's acc	1,000		
	18.	cash	636		
	26.	"	6	75	
		Forward	$32,952	29	

297 DR.

Hartford, Providence & Fishkill Railroad Company.

1857.		Am't forward	$73,137	06
Dec.	22.	To cash	1,000	
	31.	overcharge on freight	11	93
1858.				
Jan.	4.	note due this day, taken up	8,000	
	16.	" 17 " "	4,800	
	19.	" 19 " "	8,000	
	22.	" 24 " "	1,200	
	"	" 24 " "	2,000	
	"	" 25 " "	2,900	
	23.	" 24 " "	4,500	
Feb.	4.	" 6 " "	5,000	
	11.	overcharge on freight	155	67
	19.	note due 23d Sept., 1857, taken up	1,200	25
	"	" 23d Nov., " "	1,200	25
	22.	cash	7	50
	"	note due Feb. 23, 1858, taken up	7,000	
	26.	" " 26, " "	1,000	
	"	" " 26, " "	1,800	
	"	" " 26, " "	1,400	
March	1.	int. p'd Chapman & Hyde	20	67

	2.	note due this day, taken up	5,000	
	18.	" " "	10,000	
	"	" Sept. 18, 1857 "	10,000	
	"	int. on same	311	67
April	7.	note due April 8, 1858, taken up	5,000	
May	10.	" May 12 "	5,000	
	11.	int. on note due Nov. 13	368	
	25.	cash p'd note due Jan. 30, and expenses	5,097	73
	"	" " Feb. 13, "	5,086	07
	"	" " " 27, "	5,074	40
	"	" " Mar. 10, "	5,065	23
	"	" " " 31, "	5,047	73
	"	" " April 15, "	5,035	23
	"	" " May 5, "	5,018	57
	"	" " " 12, "	5,012	73
June	1.	" " June 2, 1858	5,000	
	"	protest and exp. Chapman & Hyde	1	16
	9.	paid note due June 10, 1858	5,000	
	"	" " 11 "	5,000	
		Forward	$215,451	85

298 *In account with A. & W. Sprague.*

CR.

1857.		Am't forward	$32,952	29
Dec.	26.	By 450 tickets	545	
	31.	cash	446	31
1858.				
Jan.	30.	"	265	66
Feb.	8.	"	327	02
July	23.	"	17	50
		Forward	$34,553	78

299 DR.

Hartford, Providence & Fishkill Railroad Company.

1858.		To am't forward	$215,451	85	
June	17.	Cash p'd note due June 17, 1858	5,000		
Nov.	13.	" " " Nov. 13, "	12,000		
1859.					
June	1.	Bal. int. acc	13,988	70	
					$246,440 55
1859.					
June	1.	To cash balance	211,886	77	
	"	416 coupons due July 1, 1857	14,525		
	"	int. on same to date	1,682	48	
					228,094 25
1859.					
June	1.	To cash balance	227,628	75	
	"	2½ per cent. com. on $430,008 02 indorsements	10,750	20	
1860.					
May	22.	cash	1,000		
	"	" paid note due Jan. 1, '58	5,000		
1858.					
Jan.	8.	" " " 9, '58	5,000		
1860.					
May	22.	401 coupons due Jan. 1, '58	14,750		
	"	384 " " July 1, '58	13,440		
1864.					
Nov.	30.	bal. int. acc. to date	44,422	05	
					321,991
1864.					
Nov.	30.	To balance due as cash this date			129,376
1868.					
May	27.	3 y'rs 5 mos. 27 d. int. to date at 7 per cent			31,621 66
	"	coupon acc. transferred as cash this date			820 40
					$161,818 06

300 *In account with A. & W. Sprague.* CR.

1859.		By am't forward	$34,553 78	
June	1.	By balance to new acc	211,886 77	
				$246,440 55
1859.				
June	1.	By bal. coupon acc. retransferred	465 50	
	"	" to new acc	227,628 75	
				228,094 25
1860.				
April	26.	By 197 bonds	172,375	
1864.				
March	24.	cash for 1,012 shares preferred stock	20,240	
Nov.	30.	bal. acc. forward	129,376	
				321,991
1868.				
May	27.	By cash rec'd from Henry N. Farwell in settlement of acc. (sold him)	135,000	
	"	loss on acc	26,818 06	
				161,818 06

301 *H. P. & F. R. R. Co. coupon acc. in acc. with A. & W. Sprague.* DR.

1856.				
Dec.	30.	To cash	$18,000	
	31.	"	10,650	
1857.				
Jan.	1.	418 coupons (our bonds)	14,612 50	
	5.	cash	5,000	
	8.	"	4,600	
	9.	"	2,000	
	3.	"	5,000	
July	6.	"	2,887 50	
				$62,750 00

CR.

1857.				
Jan.	1.	By net of notes	$61,960	
July	6.	cash from Exchange Bank	261 76	
	"	bal. acc. with Hoyt, Tillinghast & Co	62 74	
	"	bal. to new acc	465 50	
				$62,750 00
1857.				
July	6.	To bal. of acc. as cash	465 50	
1868.				
May	27.	int. to date at 7 per cent	354 90	
				$820 40

302 EXHIBIT K.

The governor and council of the commonwealth of Massachusetts having appointed George T. Bigelow, Emory Washburn, and Samuel Ashburner, esquires, commissioners under the act "to aid the construction of the Boston, Hartford & Erie Railroad," and it being necessary, in their judgment, to an intelligent performance of the duties of their office, to ascertain, among other things, what claims or liens are now outstanding, by mortgage or otherwise, upon said railroad or the

	2.	note due this day, taken up	5,000	
	18.	" " "	10,000	
	"	" Sept. 18, 1857 "	10,000	
	"	int. on same	311	67
April	7.	note due April 8, 1858, taken up	5,000	
May	10.	" May 12 "	5,000	
	11.	int. on note due Nov. 13	368	
	25.	cash p'd note due Jan. 30, and expenses	5,097	73
	"	" " Feb. 13, "	5,086	07
	"	" " " 27, "	5,074	40
	"	" " Mar. 10, "	5,065	23
	"	" " " 31, "	5,047	73
	"	" " April 15, "	5,035	23
	"	" " May 5, "	5,018	57
	"	" " " 12, "	5,012	73
June	1.	" " June 2, 1858	5,000	
	"	protest and exp. Chapman & Hyde	1	16
	9.	paid note due June 10, 1858	5,000	
	"	" " 11 "	5,000	
		Forward	$215,451	85

298 *In account with A. & W. Sprague.*

CR.

1857.		Am't forward	$32,952	29
Dec.	26.	By 450 tickets	545	
	31.	cash	446	31
1858.				
Jan.	30.	"	265	66
Feb.	8.	"	327	02
July	23.	"	17	50
		Forward	$34,553	78

299 DR.

Hartford, Providence & Fishkill Railroad Company.

1858.		To am't forward	$215,451	85	
June	17.	Cash p'd note due June 17, 1858	5,000		
Nov.	13.	" " " Nov. 13, "	12,000		
1859.					
June	1.	Bal. int. acc	13,988	70	
					$246,440 55
1859.					
June	1.	To cash balance	211,886	77	
"		416 coupons due July 1, 1857	14,525		
"		int. on same to date	1,682	48	
					228,094 25
1859.					
June	1.	To cash balance	227,628	75	
"		2½ per cent. com. on $430,008 02 indorsements	10,750	20	
1860.					
May	22.	cash	1,000		
"		" paid note due Jan. 1, '58	5,000		
1858.					
Jan.	8.	" " " 9, '58	5,000		
1860.					
May	22.	401 coupons due Jan. 1, '58	14,750		
"		384 " " July 1, '58	13,440		
1864.					
Nov.	30.	bal. int. acc. to date	44,422	05	
					321,991
1864.					
Nov.	30.	To balance due as cash this date			129,376
1868.					
May	27.	3 y'rs 5 mos. 27 d. int. to date at 7 per cent			31,621 66
"		coupon acc. transferred as cash this date			820 40
					$161,818 06

300 *In account with A. & W. Sprague.* CR.

1859.		By am't forward	$34,553 78	
June	1.	By balance to new acc	211,886 77	
				$246,440 55
1859.				
June	1.	By bal. coupon acc. retransferred	465 50	
	"	" to new acc	227,628 75	
				228,094 25
1860.				
April	26.	By 197 bonds	172,375	
1864.				
March	24.	cash for 1,012 shares preferred stock	20,240	
Nov.	30.	bal. acc. forward	129,376	
				321,991
1868.				
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				$820 40

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several parts thereof, the following interrogatories are propounded to G. M. Bartholomew, esquire, of Hartford, Connecticut, to be answered by him under oath before some competent magistrate who is authorized to administer the same, viz:

1. Are you, or have you been, a mortgagee or trustee named in a mortgage deed made by the Providence & Plainfield Railroad Corporation, bearing date on or about January 30, A. D. 1849? And if so, who were named as co-mortgagees or co-trustees in said deed, or have acted as such; and who were originally named as such in said deed?

2. Please state what bonds or other evidences of indebtedness purporting or intended to be secured by said mortgage, were or have been at any time issued or executed by said corporation or any of its officers. Give, as far and as fully as you can, the number of them, their respective dates and amounts, and the aggregate of the same; or, if not able to state accurately the aggregate amount of such bonds or evidences of indebtedness, state some sum which will cover and include the several amounts of said bonds and evidences of indebtedness.

3. Have any of said bonds or evidences of indebtedness been paid, canceled, or given up? If so, to what amount has this been done, and in which form? And what amount of such bonds or evidences of indebtedness are, according to your best knowledge and belief, outstanding or unsatisfied?

4. Please state any other fact or facts within your knowledge, information or belief, which may serve to show the amount of outstanding and unsatisfied indebtedness of said corporation, or will aid the commissioners in estimating the amounts of liens upon or charges against the Boston, Hartford & Erie Railroad, or any of the parts of which it is composed.

1. Are you, or have you been, a mortgagee or trustee named in a mortgage deed made by the Hartford, Providence & Fishkill Railroad Corporation, bearing date on or about August 25, A. D. 1855? And if so, who were named as your co-mortgagees or co-trustees in said deed, or have acted as such?

1. Are you, or have you been, a mortgagee or trustee named in a mortgage deed made by the Hartford, Providence & Fishkill Railroad Corporation, bearing date on or about August 25, A. D. 1849? And, if so, who were named as co-mortgagees or co-trustees in said deed, or have acted as such?

1. Are you, or have you been, a mortgagee or trustee named in a mortgage deed made by the Hartford & Providence Railroad
303 Corporation, bearing date on or about January 30, A. D. 1849? And if so, who were named as co-mortgagees or co-trustees in said deed, or have acted as such; and who were originally named as trustees in said mortgage?

[The portions of this exhibit not printed may be referred to and used by either party.]

I, George M. Bartholomew, of the city of Hartford, in Connecticut, on oath depose and say, that Calvin Day, Edmund G. Howe, and myself are now trustees under two several mortgages made by the Hartford, Providence & Fishkill Railroad Company, and of the several dates of August 25, 1849, and March 20, 1855, and recorded in the office of secretary of the State of Connecticut, and in which said mortgages Thomas S. Williams and others were originally made trustees.

That there are outstanding under said mortgages mortgage-bonds, upon which the principal sum is two millions fifty-five thousand and

five hundred dollars. That I have been trustee, as aforesaid, for the past ten years; and much of said time a director in the Hartford, Providence & Fishkill Railroad Company, said last-named company being successor to the franchise and property of the Hartford & Providence Railroad Company; and from my best knowledge and belief testify that there are no outstanding bonds or liabilities secured by mortgage and resting on the franchise and property mortgaged by said Hartford, Providence & Fishkill Railroad Company to Thomas S. Williams and others, except the above-named bonds, and except and until the mortgages made and executed by the Boston, Hartford & Erie Railroad Company.

I further depose and say, that the interest on said bonds, so secured by mortgage as aforesaid, has been paid up to January 1, 1868, except about the sum of one hundred and seventy thousand dollars. I further depose and say, that the above-named bonds are also secured by said Hartford, Providence & Fishkill Railroad Company by two several mortgages of its franchise and property in the State of Rhode Island, Henry Lippitt and others being the present trustees under said mortgages; and that said bonds include the whole amount of bonded or other debt of said railroad company resting on its franchise and property in Connecticut and Rhode Island secured by mortgage.

I further depose and say, that there is a sinking fund deposited with the treasurers of the cities of Hartford and Providence, to be applied in payment of the above bonds. That portion of said fund in the hands of the treasurer of the city of Hartford, on January 1, 1868, amounted to $109,835.22. The amount in the hands of the treasurer of the city of Providence is unknown to deponent, but by a report furnished in May 1, 1866, was shown to have been $71,888.40.

GEO. M. BARTHOLOMEW.

HARTFORD, *May* 25, 1868.

STATE OF CONNECTICUT, *ss:*

Then personally appeared George M. Bartholomew, signer of the foregoing affidavit, and was solemnly sworn to the truth of the same, before me.

N. SHIPMAN,
Justice of the Peace.

304 EXHIBIT L.

In answer to various interrogatories propounded to me by the commissioners appointed by the governor and council of the State [of] Massachusetts, to ascertain and report certain facts under the provisions of an act of the legislature of said State, entitled An act to aid in the contruction of the Boston, Hartford & Erie Railroad, I depose and say:

I am now and since the charter and organization of the Boston, Hartford & Erie Railroad Company an attorney and counsellor at law, retained by and in the service of said company, and generally conversant with its business. That at the purchase by it of the Hartford, Providence & Fishkill Railroad, I was present and participated in the purchase, making out the papers, and particularly interested with the examination and settlement of all floating debts or claims against said company, as well as of like claims against any and all companies whose franchise and property said Boston, Hartford & Erie Railroad Company has purchased or acquired by making joint stock or merger.

That I have given said subject-matter due attention and examination, and have personally allowed and settled or disallowed nearly every claim of the character above described.

In my examinations I have been called upon to examine all the claims which have been presented to said commissioners as claims against said Boston, Hartford & Erie Railroad Company, or against the franchise or property of the several companies by it purchased or acquired; and of them severally I say:

First. As to the claim of D. W. Vaughn and others in the matter of preferred stock in Hartford, Providence & Fishkill Railroad Company, that at the time of the purchase the opinion of counsel was had, and the Boston, Hartford & Erie Railroad Company advised that said preferred stock had no other elements or rights than as stock of the company, and that under the charter of the company and the law of the case, (there being no dispute of facts,) no one holding said stock could return the same and make a cash claim for it, and that neither the franchise and property of the Hartford, Providence & Fishkill Railroad Company or the Boston, Hartford & Erie Railroad Company could ever be made liable to pay any money on account of said stock. In this opinion I then concurred, and to it I still hold.

A suit was brought in the courts in Rhode Island which went to and was decided by the supreme court of that State, involving the above question, and brought by a holder of said preferred stock and decided against the plaintiff; and we consider the case as substantially settling the law of the case and question above and against the claims of holders of the preferred stock.

In matter of judgment of Dillon and others.

This is a judgment vs. Boston & New York Central Railroad Company, and under it plaintiffs claim to have purchased the franchise of the said company. The Midland Railroad Company was chartered with the right to purchase the property of the Boston & New York Central Railroad Company. It did so, and by virtue of its own franchise held it and conveyed its franchise and property, under a new name, to
305 wit. Southern Midland Railroad Company, to the Boston, Hartford & Erie Railroad Company. We suppose if the judgment creditor can pursue the property sold under special authority of the legislature, then it can pursue any and all personal or real estate the Boston & New York Central Railroad Company ever had; a claim too absurd to admit of a moment's consideration. The Boston, Hartford & Erie Railroad Company regard this claim as of no validity as against any estate it owns.

The claim of James Cheever we put in the same list with that of Dillon & Company, and deny any liability, as it is against the Boston & New York Central Railroad Company.

In matter of Tristram McKay, the same ground is taken as in Dillon, &c., and Cheever.

The claims of Skinner & Hunt severally for $5,000 and interest is in litigation. Mr. S. W. Bates, who has the same in special charge, gives to the company his belief that the company will not be held liable on the claims. I have formerly been of counsel for Mr. Hunt, and so it would be improper for me to express any opinion. The company rely on that of Mr. Bates.

The claim of Daniel Denny for estate of Henry Gardiner has within a few days been negotiated, and papers are drawn in settlement.

The claims of A. W. Sprague, Waterman & Tillinghast & Co., Francis A. Andrews, are all paid and taken up in interest of the company, the Boston, Hartford & Erie Railroad Company, since the presentation of the claims.

The claim of Everett about depot, &c., has, since presentation, been fully adjusted, and no claim on that matter exists against the railroad company.

The claim of Palmer Sessions was wholly denied by the Hartford, Providence & Fishkill Railroad Company as not due, and so this company repudiates for that reason, and for and on account of statute of limitations.

The claim of Edward Hayes is denied as not due or collectable, for that this company has never employed or become liable in the premises.

The claim of Edward S. Hall is, I believe, wholly without foundation. This is the opinion I long ago gave on examination of the claim.

The claim of J. C. Vinton shows it at most a small matter. I am not sufficiently advised to say whether any part of the claim is or not just.

The same answer is given as to the claim of C. F. Bray, trustee. It seems to be a question of a way. I am advised it is being and will be satisfactorily adjusted and without expenditure of any amount.

So far I do not believe the Boston, Hartford & Erie Railroad Company liable to pay any money on the claims.

Duty Lapham claims an appraisal due for lands in Rhode Island, from Union Woonsocket Railroad Company, of $511.17 and interest. I was not advised of this claim before, and presume when we build that portion of the line the amount will have to be paid if his lands are taken.

306 D. S. Whipple claims note for $495, and interest from October, 1864. It has never been presented. If due, the property obtained of New York & Boston is held for it after mortgage. I call that due, and will be paid when presented, probably.

Geo. M. Way's exn. for $159.37 would be paid if presented. Provision has been made for it since August, 1863.

C. & S. Harris' claim.—He has been asked to send it for pay, but has not. Will be paid on presentation.

These include all claims presented the honorable commissioners and by them handed me. My judgment and belief is that there is not over six thousand dollars of the whole claims can or will ever be collected out of the Boston, Hartford & Erie Railroad Company, or from any estate in its possession.

THOMAS E. GRAVES.

BOSTON, *September* 19, 1868.

BOSTON, *September* 19, 1868.

STATE OF MASSACHUSETTS,
Suffolk County, ss:

Then personally appeared Thomas E. Graves, signer of the foregoing affidavit, and was duly sworn to the truth of the same, before me.

H. S. BARRY,
Justice of the Peace.

[U. S. revenue stamp, 5c., cancelled.]

EXHIBIT M.

The officers of Boston, Hartford & Erie Railroad Company have examined the list of claims shown them by Massachusetts commissioners, and say as to claim—

S. Dillon and others for $37,540 and interest. The Boston, Hartford & Erie is not holden for any indebtedness of Boston & New York Central. It is purchaser of its property through Midland, but not of its franchise, and, so far as known, no one has seriously made claim that this company was so holden, and sure it is no such debt has been paid or acknowledged.

W. Everett's claim is of same nature.

James Cheever do. do.

Tristram McKay do. do.

Edward Hayes, not acknowledged as due from this company.

Duty Lapham do. do.

307 Warren Hunt.—Matters in court, and so far the case looks for railroad company; and it is advised by counsel of railroad company that the respondents will prevail.

L. S. Skinner. do. do. do.

Palmer Sessions.—His claim is wholly repudiated as unjust, and also that statute limitation has barred it if there ever was one.

J. C. Vinton, Mr. Bowdoin.—We are advised the claims are of small amount.

Estate of Jackson. do. do. do.

Edward S. Hall.—We are advised these claims settled years ago.

D. S. Whipple.—Note presumed correct.

George M. Way.—Never heard of. If he holds the claim it will be settled.

C. & S. Harris.—Presumed correct, and will be paid.

W. & Tillinghast.—Is paid.

F. A. Andrews. do.

A. & W. Sprague. do.

Gardner estate.—Matter of controversy. Mr. S. W. Bates is of opinion there is no claim.

EXHIBIT N.

To the committee appointed by governor and council of Massachusetts in matter of scrip to the Boston, Hartford & Erie Railroad Company:

GENTS: We have examined the claims presented you as against corporations now owned by us, as follows:

S. Dillon and others for $37,540 and interest.

W. Everett for a claim unsettled.

James Cheever, ex., $7,872.41 and interest.

Tristram McKay, ex., $3,305.88.

All against late Boston & New York Central Railroad Company; and all liability of this corporation for them is denied.

D. W. Vaughn, claim indefinite and wholly denied.

Edward Hayes' claim for $4,042.25 is denied.

Duty Lapham, note for $511.17 is presumed correct.

Warren Hunt, $5,000 each vs. Boston & New York Central.

Lucian Skinner, $5,000 each, both denied.

D. S. Whipple, note $495 and interest, presumed correct.

J. C. Vinton, land claims indefinite in claim and not known.

Estate of Jackson, " " "

308 Edward S. Hall claims $4,275.00; claim denied.

Palmer Sessions " 2,344.86; " "

Gardner estate, claims indefinite and unsettled.

All others sent in to you are settled, except—

C. and S. Harris' note, $3,888.78, admitted due.

Way Brothers, ex.,	159.37,	supposed due.
Duty Lapham, jud.,	571.17,	presumed due.
D. S. Whipple, note,	495.00,	" "
	$5,053.32	

Amount of claim made in definite sums and denied, $69,380.
Amount admitted, $5,053.
Certain claims for lands, &c., indefinite in amounts and cannot be answered more definitely.

EXHIBIT O.

OFFICE OF THE A. & W. SPRAGUE MANUFACTURING COMPANY,
Providence, R. I., March 18, 1868.

G. T. Bigelow, Emory Washburn, Samuel Ashburner, commissioners, Boston, Mass.

GENTLEMEN: We notice in Providence Journal your advertisement to creditors of Boston, Hartford & Erie Railroad Company, &c.

We have claims against the Hartford, Providence & Fishkill Railroad Company, as indicated by accounts in their possession, aggregating, with interest to present date, to say, in round figures, $245,000. This amount does not include a claim against them for trespassing with their main track upon portions of the property of this company, the amount of which we have not as yet determined upon.

For a portion of our claim we have suit now pending in Hartford and Providence.

Respectfully, yours,

A. SPRAGUE, *Treasurer.*

EXHIBIT P.

HARTFORD, *Sept.* 18, 1868.

Hon. G. T. Bigelow, chairman board of commissioners, &c.

DEAR SIR: So far as the relations between the Boston, Hartford & Erie Railroad Company and the Hartford, Providence & Fishkill
309 Railroad Company, or the trustees for the bondholders of the latter road, are concerned, there are not, within my knowledge, any obligations of the first-named company, except such as are recorded in the contract between the two companies, and dated August 28, 1863, and such as would follow the purchase of any property; i. e., that it is liable for the existing mortgage. I refer to the $2,055,000 Hartford, Providence & Fishkill Railroad bonds.

There have been two mortgages made by the Boston, Hartford & Erie, viz., say one of February 2, 1864, and one of March 19, 1866, the latter being called the "Berdell mortgage," which are the only other documents, so far as I am aware, which can have any reference to the obligations aforesaid.

Yours, respectfully,

GEO. M. BARTHOLOMEW, *Trustee.*

I concur in the above statement.

CALVIN DAY, *Trustee.*

EXHIBITS Q, R, S, T, U, V.

These are certificates and transfers of stock of the Boston, Hartford & Erie Railroad Company, and may be referred to by either party.

1st. Certificate of 9,620 shares, dated August 28, 1863, issued to Geo. M. Bartholomew and John Hooker, trustees, surrendered; and—

2d. New certificate issued for the 9,620 shares issued to same trustees and Shubael Hutchins, October 24, 1863, of which the transfers were as follows:

February 6, 1864, to	Geo. M. Bartholomew			816	shares
March 28,	"	"	"	1,200	"
March 6, 1865	"	"	"	217	"
September 11, 1867	"	"	"	25	"
November 26, 1867	"	"	"	13	"
				2,271	"
November 9, 1868, to J. S. Eldridge, H. N. Farwell, and J. W. Converse, trustees				7,349	"
				9,620	"

The transfer of the 7,349 shares by Geo. M. Bartholomew and John Hooker, surviving trustees, to John S. Eldridge, Henry N. Farwell, and James W. Converse, is as follows:

310 Whereas by a contract between the Boston, Hartford & Erie Railroad Company and Hartford, Providence & Fishkill Railroad Company, dated August 28, 1863, certain stock, say 9,620 shares of Boston, Hartford & Erie Railroad Company was placed in the hands of Shubael Hutchins, Geo. M. Bartholomew, and John Hooker, trustees, to liquidate and adjust claims and demands against said Hartford, Providence & Fishkill Railroad Company, as by sections 5, 7, and 8 of said contract may appear; and whereas the superior court of the State of Connecticut at its September term, 1868, in Hartford County, have made a decree that the remaining 7,349 shares of that stock shall be transferred to said Boston, Hartford & Erie Railroad Company or their order; and whereas the directors of said Boston, Hartford & Erie Railroad Company, by vote of July 20, 1868, voted that John S. Eldridge, Henry N. Farwell, and J. W. Converse be a committee to receive such remaining stock, as trustees for said Boston, Hartford & Erie Railroad Company:

Now, therefore, we, Geo. M. Bartholomew and John Hooker, surviving trustees, do hereby transfer and assign unto said Eldridge, Farwell, and Converse, as said trustees, said seventy-three hundred and forty-nine (7,349) shares of stock, and hereby constitute and appoint H. S. Barry our attorney to transfer and assign said stock on the books of said Boston, Hartford & Erie Railroad Company to them as trustees aforesaid.

GEO. M. BARTHOLOMEW,
JOHN HOOKER,
Trustees.

Dated, Hartford, Conn., November 7, 1868.

Witness to signature of Geo. M. Bartholomew,
W'M C. CHURCH.

Witness to signature of J. Hooker,
HENRY E. BURTON.

3d. Certificate of the 7,349 shares issued November 9, 1868, to John S. Eldridge, Henry N. Farwell, and J. W. Converse, trustees.

Upon the back of this certificate they, December 10, 1868, made the following transfer, to wit:

For value received, the undersigned hereby transfer to Henry N. Farwell, tre., of Boston, seventy-three hundred and forty-nine (7,349) shares of the capital stock of the Boston, Hartford & Erie Railroad Company.

JOHN S. ELDRIDGE, *Trustee.*
HENRY N. FARWELL, *Trustee.*
J. W. CONVERSE, *Trustee.*

Dated at Boston, December 10, 1868.

311 4th. A certificate of the 7,349 shares was issued December 10, 1868, to Henry N. Farwell, trustee. The transfers on this certificate are:

April 29, 1870, to Geo. W. Long & Co	4,156	shares
" Henry N. Farwell, trustee	3,193	"
	7,349	"

These remaining 3,193 shares remained to the credit of Henry N. Farwell, trustee, without a certificate, and were transferred as follows:

May 11, 1870, to Geo. W. Long & Company, by power of attorney to H. S. Barry, on file, signed Henry N. Farwell, trustee,	1,000
June 15, 1870, to Geo. W. Long & Company, by power of attorney to Frank Pickett, signed Henry N. Farwell	800
June 24, 1870, to G. W. Long & Company, by power of attorney to Frank Pickett, signed Henry N. Farwell, trustee	1,393
	3,193

EXHIBIT X.

[Copy.]

This agreement, entered into this day of , A. D. 1852, by and between the Hartford, Providence and Fishkill Railroad Company and the city of Providence, in which each and all the acts and stipulations to be done and performed by each of the several parties hereto are in consideration of each and all the acts and stipulations to be done and performed by the other, witnesseth:

Article 1. The said railroad company are to issue and deliver to the city of Providence in exchange for an equal amount of bonds of said city, as hereinafter provided, their railroad bonds of one thousand dollars, ($1,000,) each, to an amount not exceeding five hundred thousand dollars, bearing interest at the rate of seven per cent. per annum, payable semi-annually, with interest-warrants attached, the principal sum payable at the end of twenty-five years from the 1st January, A. D. 1851, to the city of Providence, or assigns, with security as follows, viz:

(1.) Said company will execute a first mortgage of the railroad in Rhode Island to trustees, to be named by the city council of Providence, for such an amount of their bonds as shall not exceed one-half the amount expended on said railroad; which bonds so secured by a first mortgage of all and singular the franchises, roads, and real estate of said company within the State of Rhode Island, and so far as the
312 same may lawfully be issued to an amount not exceeding five hundred thousand dollars ($500,000,) shall from time to time be

issued to and taken by said city of Providence in exchange for equa amounts of the bonds of said city.

(2.) If said railroad company cannot lawfully issue the full amount of five hundred thousand dollars ($500,000) of said bonds on the mortgage security of their railroad in Rhode Island, the balance of such loan of five hundred thousand dollars of bonds of the city of Providence, to an amount not exceeding two hundred thousand dollars, ($200,000,) shall be exchanged for said company's bonds, issued under the mortgage of their road and estate in Connecticut, dated on the twenty-fifth day of August, A. D. 1849, and recorded in the office of the secretary of state, in Connecticut, as certified by Roger H. Mills, secretary of state, said bonds being similar to and having identical and equal security with the bonds to be issued to the city of Hartford; such legal advisers as the city of Providence may select to be satisfied of the equality and identity of such security.

And said company will execute and deliver to the same trustees named by the city council as aforesaid, for the benefit of the city of Providence, a second mortgage of their railroad and real estate in Rhode Island, as further security for such and so many of the bonds of said company issued under their Connecticut mortgage as shall from time to time be taken by said city in exchange for bonds of said city.

Article 2. The said railroad company will expend at least the amount of five hundred thousand dollars, ($500,000,) together with such an additional amount as may be received from the subscriptions to the stock of the Providence & Plainfield Railroad Company, upon and for the construction of a continuous line of railroad from Providence westerly to the Norwich & Worcester Railroad, in the first place; and if any balance remain, then towards Willimantic; and said railroad company agree that they will issue no bonds for the extension of their railroad beyond the Naugatuck Valley without the assent of the city council of Providence so long as said city shall hold bonds of said company issued under the mortgage on their road and estate in Connecticut.

Article 3. In exchange for the bonds of said railroad company, to be lawfully issued as aforesaid, the city of Providence will from time to time, as the same may be required for the construction of the railroad, issue an equal amount of bonds, scrip, or certificates of debt of the city of Providence, in sums of one thousand dollars ($1,000) each, payable at the end of twenty-five years from the first of January, A. D. 1851, with interest-warrants attached, at the rate of six per cent. per annum, payable semi-annually, as authorized by an act of the general assembly of the State of Rhode Island and Providence Plantations, and the vote of the city of Providence thereon, and pursuant to an advance of the city council of said city entitled "An ordinance in relation to the loan of the credit of the city of Providence in aid of the Providence & Plainfield Railroad and for its extension," and to the provisions of this instrument.

Article 4. (1.) When three hundred thousand dollars ($300,000)
313 shall have been expended on the railroad between Providence and the Norwich & Worcester Railroad, the issue of said city bonds shall commence, and said railroad company shall receive in exchange for their bonds one hundred and fifty thousand dollars ($150,000) of the bonds of said city; but no more city bonds shall be issued until the railroad company have expended upon their railroad between said points the sum of five hundred and fifty thousand dollars.

(2.) As the expenditure between Providence and the Norwich &

Worcester Railroad shall be increased, the issue of said city bonds to said company shall be increased as from time to time required, but not to exceed five hundred thousand dollars, nor one-half the expenditure upon the railroad between those points. But no more than four hundred thousand dollars of the city bonds shall be issued until the board of aldermen shall be satisfied that the issue of the balance of said city bonds will insure the completion of a continuous line of railroad to be built by said company from the depot in Providence to Willimantic; and then no more than seventy thousand dollars of said balance shall be issued until all necessary railroad accommodations at this end of said railroad shall have been finally made and completed, and until such *h*ands in the Cove as shall be agreed upon by said railroad company and the city council for said company to fill in, if any such agreement shall be made, shall have been filled in, in compliance with the terms to be imposed by said city council.

Article 5. If at any time it shall be found by the city council of the city of Providence that said railroad company are not in good faith complying with and fulfilling the stipulation of this agreement, then said city council may suspend the further issue of city bonds until it shall appear that said company are in good faith complying with and fulfilling said stipulations.

Article 6. The "sinking-fund" and appointment of trustees of the sinking-fund, as established and provided for by the act of the general assembly of the State of Rhode Island, are hereby agreed to.

Article 7. The expenses attending the preparation and issue of the bonds of the city of Providence, including reasonable compensation to the city treasurer and clerk, shall be defrayed by said railroad company.

Resolved, That the form of agreement reported by the special committee on the issue of city bonds to the Hartford, Providence & Fishkill Railroad Company in relation to such issue be approved and adopted, and that the city treasurer be, and he is hereby, authorized to execute the same in the name and in behalf of the city, and to affix thereto the seal of the city.

(Passed February 3, 1852.)

THE CITY OF PROVIDENCE,
City Clerk's Office, September 22, 1871.

This is to certify that the aforegoing is a true copy as the same appears of record in book of records of the city council, No. 3, pages 198, 199, 200, and 201.

Witness my hand and the seal of said city.

SAMUEL W. BROWN, [SEAL.]
City Clerk.

314 EXHIBIT Y.

No. 174.] UNITED STATES OF AMERICA. [No. 174.

1,000.] State of Rhode Island and Providence Plantations. [1,000

Providence city scrip.

PROVIDENCE, *July* 1, 1853.

This certifies that the city of Providence is indebted to the Hartford, Providence & Fishkill Railroad Company in the principal sum of one

thousand dollars, payable to said company or its assigns at the end of twenty-five years from the first day of January, in the year one thousand eight hundred and fifty-one, with interest at the rate of six per cent. per annum, payable semi-annually on delivery of the interest-warrants hereto annexed, as they shall respectively become payable, until said principal sum is fully paid.

In testimony whereof, and in accordance with a three-fifths vote of the electors of the city of Providence, in a meeting duly warned and held for that purpose, and of the ordinance of the city council of said city, I, Walter R. Danforth, mayor of said city, hereunto subscribe my name and cause the seal of said city to be affixed.

W. R. DANFORTH, *Mayor.* [SEAL.]

Dated at Providence July 1, 1853.

Countersigned by—

ESEK. ALDRICH, *Treasurer.*

Registered by—

ALBERT PABODIE, *City Clerk.*

For value received, the Hartford, Providence & Fishkill Railroad Company assign the above bond to or bearer, and promise that the interest and the principal sum thereof shall be paid in the city of New York, on surrender of the annexed interest-warrants and of said bond, as they respectively become payable.

In testimony whereof said company have caused their seal and the signature of their president to be hereto affixed, at their office in Hartford, this sixth day of December, A. D. 1853.

JAMES M. BUNCE, *President.* [SEAL.]

CITY TREASURER'S OFFICE,
Providence, R. I., September 22, 1871.

I, Benjamin Tripp, city treasurer of the city of Providence, do hereby certify that the foregoing is a true copy of one of the five hundred bonds issued by the city of Providence to the Hartford, Providence & Fishkill Railroad Company in the year 1853, and that the original bond of which the above is a copy is now in my custody.

BENJ. TRIPP, *City Treasurer.*

315 STATE OF RHODE ISLAND, *Providence, ss:*

Subscribed and sworn to before me this 22d day of September, A. D. 1871, in the city of Providence.

CHARLES H. PARKHURST,
Public Notary.

EXHIBIT Z.

Received of Geo. M. Bartholomew a note of late Hartford, Providence & Fishkill Railroad Company to H. F. Sumner for $1,000, and 36 coupons of bonds of said company call to said note; for which gave said G. M. B. draft of date of Oct. 28, 1868, for $1,000, on treasury of Boston, Hartford & Erie Railroad Company.

T. E. GRAVES.
Agent and Attorney Boston, Hartford & Erie Railroad Company.

NOV. 4, '68.

G. M. B., Esq.:

DEAR SIR: I send you copy of vote. Please send stock.

EXHIBIT A[1].

Contract of August 23, 1863, between the Hartford, Providence & Fishkill Railroad Company and the Boston, Hartford & Erie Railroad Company.

The printed copy of this, accompanying the master's report, may be used.

EXHIBIT B[1].

Lease of franchise, road, and property by the Hartford, Providence & Fishkill Railroad Company to the Boston, Hartford & Erie Railroad Company, dated August 28, 1863. The printed copy accompanying the master's report may be used.

EXHIBIT C[1].

Deed of franchise, road, and property by Hartford, Providence & Fishkill Railroad Company to Boston, Hartford & Erie Railroad Company, dated August 28, 1863. The printed copy accompanying the master's report may be used.

316 EXHIBIT D[1].

Received, Boston, Nov. 14, 1863, of the trustees under contract of Boston, Hartford & Erie Railroad Company, and the Hartford, Providence & Fishkill Railroad Company, the deed, lease, and contract to be by them delivered said Boston, Hartford & Erie Railroad Company; and I agree to hold the same as still in their hands until the injunction in favor of Gardner Chapman is discharged, and then deliver said Boston, Hartford & Erie Railroad Company.

THO'S E. GRAVES,
Attorney of said Boston, Hartford & Erie Railroad Company.

EXHIBIT E[1].

This is a copy of the record of the case of A. & W. Sprague against the Hartford, Providence & Fishkill Railroad Company, in the superior court of Connecticut, consisting of—

Writ dated January 1, 1858, returnable second Tuesday of March, 1858, at Hartford, containing a declaration on the common counts in assumpsit.

Officer's return of attachments of real estate made in January, 1858, and of service on the defendants, made February 15, 1858, and the docket entries, to wit:

The following are the docket entries in the case of A. & W. Sprague vs. The Hartford, Providence & Fishkill Railroad Company in the superior court for Hartford County:

No. 655, March term, 1858.

Messrs. Chapman & Chapman appeared as counsel for plaintiffs, and Messrs. Hungerford & Cone for defendants.

	Con. 36	92. Sept. term, 1859.....	con. 53
464. Sept. term, 1858.....	con. 57	78. Dec. term, 1859.....	con. 59
386. Dec. term, 1858.....	con. 58	55. March term, 1860....	con. 49
234. March term, 1859....	con. 52	42. Sept. term, 1860.....	con. 24

30. Dec. term, 1860	con. 43	4. Dec. term, 1864	con. 54
30. March term, 1861	con. 4	1. March term, 1865	con. 37
23. Sept. term, 1861	con. 59	1. Sept. term, 1865	con. 54
17. Dec. term, 1861	con. 48	1. Dec. term, 1865	con. 37
16. March term, 1862	con. 40	1. March term, 1866	con. 48
15. Sept. term, 1862	con. 39	1. Sept. term, 1866	con. 35
13. Dec. term, 1862	con. 60	1. Dec. term, 1866	con. 38
8. March term, 1863	con. 32	1. March term, 1867	con. 38
8. Sept. term, 1863	con. 13 as 3	1. Sept. term, 1867	con. 51
7. Dec. term, 1863	con. 21	1. Dec. term, 1867	con. 46
7. March term, 1864	con. 45	1. March term, 1868	con. 42
7. Sept. term, 1864	con. 21		

317 Withdrawn in vacation, August 5, 1868, but entered under the statute as No. 1, in the Sept. term, 1868, with the entry of a withdrawal in vacation.

EXHIBIT E[2].

Whereas this board of receivers are advised and informed that H. N. Farwell received from Messrs. A. & W. Sprague coupons of the bonds of the Hartford, Providence & Fishkill Railroad Company and of the bond of the city of Providence, amounting on the face of the coupons to about eighty-four thousand dollars, and which coupons are the property of the Boston, Hartford & Erie Railroad Company, but are retained by said Farwell:

Voted, that proper proceedings shall be taken and had to obtain from said Farwell, or any other person in whose hands said coupons or any of them may be, the delivery to this board of such coupons; and that our counsel be authorized and requested to institute and prosecute such proceedings, and to institute and prosecute such other claims against A. G. Farwell & Co., or H. N. Farwell, as appear to exist.

EXHIBIT F[1].

Copy of record showing entry of "settled" in Sprague case in Rhode Island, June 18, 1868. May be referred to.

EXHIBIT J[1].

Sprague account rendered 1864–'5. May be used.

EXHIBIT S[1].

Act of the State of Rhode Island, passed at January session, 1851, authorizing the city of Providence to loan its credit in aid of the Providence & Plainfield Railroad. May be referred to.

EXHIBIT T[1].

Ordinance in relation to the loan of the credit of the city of Providence in aid of the Providence & Plainfield Railroad and for its extension. May be referred to.

318 EXHIBIT U[1].

Copy of record of three mortgages from the Hartford, Providence & Fishkill Railroad Company; one to Benjamin Hoppin, Alexander Dun-

can, and Samuel Ames, trustees, dated September 24, 1852; another to Benjamin Hoppin, Alexander Duncan, and Samuel Ames, trustees, dated September 24, 1852; and a third to Benjamin Hoppin, Alexander Duncan, Samuel Ames, and Aldrich, treasurer of the city of Providence, trustees, dated April 12, 1854. May be referred to.

EXHIBIT V[1].

Copy of record of mortgage from Hartford, Providence & Fishkill Railroad Company of its Connecticut property to Thomas S. Williams, William H. Imlay, D. F. Robinson, trustees, dated August 25, 1849. May be referred to.

EXHIBIT W.

Copy of mortgage of Connecticut property by the Hartford, Providence & Fishkill Railroad Company to Thomas S. Williams, William H. Imlay, D. F. Robinson, trustees, dated March 20, 1855. May be referred to.

319 DEFENDANTS' EXHIBITS.

EXHIBIT E.

Received, Boston, September 24, 1868, from A. & W. Sprague, of Providence, Rhode Island, four hundred and eleven (411) coupons of the Hartford, Providence & Fishkill Railroad Company, due January 1, 1857, numbered as follows:

135 coupons, 34, 32, 468, 755–789, 814–873, 881–884, 922–924, 955–'6–'9, 1000–1009.

118 coupons, 1035–'6, 1038–1041, 1044, 1047–1049, 1126, 1128–1206, 1300–1303, 1349, 1353–1375.

98 coupons, 1410–1414, 1419–'20, 1428–1431, 1436–1439, 1444–'45, 1448–'49, 1455–1478, 1551–1605.

58 coupons, 1607–1618, 1633–1636, 1650–1683, 1686–1693.

409 coupons, at $35 dollars each	$14,315
1452, 1454—2 do. $17.50 each	35
411 coupons—value	14,350

Said coupons were duly paid for and in behalf of said railroad company by said A. & W. Sprague, out of funds furnished as per their account rendered, and are now received from them for purpose of cancellation.

H. S. BARRY,
Ass't Treasurer Boston, Hartford & Erie Railroad Company, Successor to Hartford, Providence & Fishkill Railroad Company.

[Exhibit I on page 280.]

320 DR. *Hartford, Providence & Fishkill Railroad Company.*

1856.					
Nov.	15.	To cash	1,000		
	17.	"	500		
	26.	"	700		
Dec.	3.	"	1,000		
	8.	" net of drafts	9,666	66	
	15.	" "	4,833	33	
	29.	" "	4,833	33	
	30.	"	18,000		See opposite.
	31.	"	10,650		

1857.					
Jan.	5.	"	net of draft	4,834 17	
	10.	"		3,500	
	12.	"	net of draft	4,834 17	
	26.	"	"	4,834 17	
	27.	"		200	
Feb.	2.	"	net of draft	4,834 17	
	12.	"		4,834 17	
Mar.	2.	"	net of draft	4,831 67	
	9.	"	"	4,831 67	
	16.	"	"	6,331 67	
	"	tickets ret'd		540	
	"	memo. check		4,276 88	
	30.	cash		4,831 67	
Apr.	1.	1½ gal. oil		1 50	
	11.	cash		3,200	
	17.	"		4,832 50	
May	6.	"		4,831 67	
	18.	"		4,831 67	
June	30.	bal. of int. acc. to date		547 53	
	"	their note given up due May 1-4, 1857		40,000	
	"	int. on same to date		380	
					$163,922 60

321 *In account with A. & W. Sprague.* CR.

1856.					
Nov.	18.	By cash		$500	
	19.	"		1,000	
	28.	"		700	
Dec.	1.	railroad-tickets, (200)		900	
	2.	" (300)		1,350	
	4.	" (500)		2,250	
	5.	cash		1,600	
	15.	"		3,791 66	
	18.	"		3,426 33	
	26.	"		2,582	
	27.	"		2,000	
	31.	transfer of Dr. entries Dec. 30 and 31 to coupon acc		28,650	See opposite
1857.					
Jan.	3.	cash		5,333 33	
	6.	"		2,200	
	17.	100 railroad-tickets		88	
	21.	cash		2,258	
Feb.	2.	"		200	
	"	memo. check		469 10	
Jan.	31.	100 railroad-tickets		116	
Feb.	14.	cash		1,441 24	
	23.	"		5,400	
Mar.	2.	"		4,831 67	
	6.	101 railroad-tickets		88 88	
	9.	100 "		24	
	10.	cash		5,600	
Apr.	2.	"		10,000	
	"	300 railroad-tickets		228	
	17.	cash		3,800	
	23.	100 railroad-tickets		88	
May	2.	cash		5,000	
	6.	"		1 50	
	12.	freight		128 22	
	18.	cash		7,000	
	19.	200 railroad-tickets		204	
June	1.	cash		10,000	
	23.	120 railroad-tickets		106 40	
	27.	bal. of freight		202 34	
	30.	cash		22,363 93	
	"	bal. to their debit in new acc		28,000	
					$163,922 60

322 DR. *Hartford, Providence & Fishkill Railroad Company,*

1857.					
June	30.	To cash bal. brought forward		28,000	
"		cash		15,000*	
July	1.	"		10,410*	
	2.	"		11,000*	
	3.	"		3,950*	
	6.	"		2,200	
	"	bal. coupon acc. transferred		465 50	
	"	cash		140*	
	7.	"		5,000	
	9.	"		1,645*	
	10.	overcharge		66 40	
	14.	cash		4,957 50†	
	28.	"		245*	
Aug.	10.	draft on N. Y. due Feb. 13, 1858		5,000	
	17.	" 20, "		2,500	
	"	overcharge on freight		91 44	
Sept.	2.	draft on N. Y. due March 3, 1858		2,500	
	"	138 tons coal and insurance		544 37	
	4.	overcharge on freight		49 76	
	8.	$86\frac{9}{10}$ tons coal, freight and insurance		453 04	
	15.	draft on N. Y. due March 17, 1858		2,500	
	22.	cash		700	
	30.	bal. of int. acc. to date		667 52	
					$98,085 53
Sept.	30.	To bal. acc. forward as cash		46,859 69	
"		" coupon acc		465 50	
Oct.	3.	draft on N. Y. due April 4, 1858		2,500	
	6.	" 8, "		5,000	
	10.	overcharge on freight		87 12	
	13.	draft on N. Y. due April 15, 1858		2,500	
	19.	cash for 10 coupons		350*	
	27.	draft on N. Y. due April 29, 1858		5,000	
	30.	1 coupon		6 13‡	
Nov.	5.	memo. check		38 47	
	9.	draft on Phila. due May 12, 1858		10,000	
	16.	overcharge on freight		66 15	
	18.	memo. check for tickets		204	
Dec.	14.	2 coupons		60	
		Forward			$73,137 06

323 *In account with A. & W. Sprague.* CR.

1857.				
July	6.	By cash	$4,276 88	
	8.	freight	114 30	
	"	200 tickets	204	
	23.	cash	4,307 16	
	28.	70 tickets	57 20	
Aug.	4.	225 "	218	
	5.	cash	5,000	
	10.	"	5,000	
	15.	"	3,000	
	21.	"	6,500	
	27.	"	5,000	
Sept.	3.	"	5,000	
Aug.	31.	250 tickets	250	
Sept.	7.	cash	2,500	
	10.	Chapman & Hyde's account	1,000	
	"	" " "	1,200	
	"	" " "	1,200	
	"	" " "	1,000	
	21.	cash	2,858 80	
	17.	100 tickets	74	

* For coupons held as collateral.
† $857.50 of this is for coupons held as collateral.
‡ Held as collateral.

	25.	cash	2,000	
	30.	bal. of coupon account forward	465 50	
	"	" of account "	46,859 69	
				$98,085 53
Oct.	2.	By cash	2,500	
	9.	"	5,000	
	13.	cash	4,500	
	12.	200 tickets	140	
	16.	cash	723 07	
	27.	"	9,000	
	1.	wood	38 47	
	23.	100 tickets	88	
	28.	100 "	116	
Nov.	18.	200 "	204	
	25.	cash	9,000	
Dec.	10.	Chapman & Hyde's account	1,000	
	18.	cash	636	
	26.	"	6 75	
		Forward		$32,952 29

324 DR. *Hartford, Providence & Fishkill Railroad Company.*

	1857.	Am't forward	$73,137 06	
Dec.	22.	To cash	1,000	
	31.	overcharge on freight	11 93	
	1858.			
Jan.	4.	note due this day, taken up	8,000	
	16.	" " 17 "	4,800	
	19.	" " 19 "	8,000	
	22.	" " 24 "	1,200	
	"	" " 24 "	2,000	
	"	" " 25 "	2,900	
	23.	" " 24 "	4,500	
Feb.	4	" " 6 "	5,000	
	11.	overcharge on freight	155,67	
	19.	note due 23d September, 1857, taken up	1,200 25	
	"	" 23d November, " "	1,200 25	
	22.	cash	7 50	
	"	note due February 23, 1858, taken up	7,000	
	26.	" " 26, " "	1,000	
	"	" " 26,	1,800	
	"	" " 26, "	1,400	
Mar.	1.	interest p'd Chapman & Hyde	20 67	
	2.	note due this day, taken up	5,000	
	18.	" " "	10,000	
	"	" Sept. 18, '57, "	10,000	
	"	interest on same	311 67	
April	7.	note due April 8, '58, taken up	5,000	
May	10.	" " May 12, "	5,000	
	11.	interest on note due Nov. 13	368	
	25.	cash p'd note due Jan. 30, and expenses	5,097 73	
	"	" " " Feb. 13, "	5,086 07	
	"	" " " " 27, "	5,074 40	
	"	" " " Mar. 10, "	5,065 23	
	"	" " " " 31, "	5,047 73	
	"	" " " April 15, "	5,035 23	
	"	" " " May 5, "	5,018 57	
	"	" " " " 12, "	5,012 73	
June	1.	" " " June 2, '58	5,000	
	"	protest and exp. Chapman & Hyde	1 16	
	9.	paid note due June 10, 1858	5,000	
	"	" " " 11, "	5,000	
		Forward		$215,481 85

325 *In account with A. & W. Sprague.* CR.

	1857.	Am't forward	$32,952 29	
Dec.	26.	By 450 tickets	545	
	31.	cash	446 31	

1858.				
Jan. 30.	"		265 66	
Feb. 8.	"		327 02	
July 23.	"		17 50	

326 DR. *Hartford, Providence & Fishkill Railroad Company,*

1858.	To am't forward	$215,451 85	
June 17.	To cash p'd note due June 17 '58	5,000	
Nov. 13.	" " " Nov. 13	12,000	
1859.			
June 1.	balance interest account	13,988 70	
			$246,440 55
1859.			
June 1.	To cash balance	211,886 77	
"	416 coupons due July 1, '57	14,525	
"	interest on same to date	1,682 48	
			228,094 25
1859.			
June 1.	To cash balance	227,628 75	
"	2½ per ct. commission on $430,008.02 indorsements	10,750 20	
1860.			
May 22.	cash	1,000	
"	" p'd note due Jan. 1, '58	5,000	
1858.			
Jan. 8.	" " " 9, '58	5,000	
1860.			
May 22.	401 coupons due Jan. 1, '58	14,750	
"	384 " " July 1, '58	13,440	
1864.			
Nov. 30.	balance interest account to date	44,422 05	
			1,321,991
1864.			
Nov. 30.	To balance due as cash this date	129,376	
1868.			
May 27.	3 years, 5 months, and 27 days interest to date, at 7 per ct	31,621 66	
"	coupon account transferred as cash this date	820 40	
			$161,818 06

In consideration of one dollar to us paid, the receipt whereof we do hereby acknowledge, we hereby assign and transfer to Henry N. Farwell the above account, and authorize him to use all means in the law to collect the same in our name at his expense from date.

A. & W. SPRAGUE.

PROVIDENCE, May 27, 1868.

327 *In account with A. & W. Sprague.* CR.

1859.	By am't forward	$34,553 78	
June 1.	balance to new account	211,886 77	
			$246,440 55
1859.			
June 1.	By balance coupon account retransferred	465 50	
1.	balance to new account	227,628 75	
			228,094 25
1860.			
April 26.	By 197 bonds	172,375	
	cash for 1012 shares preferred stock	20,240	
	balance account forward	129,376	
			$321,991

328 DR. *Memorandum of coupons held by A. & W. Sprague, Nov. 30, 1864.*

270	H. P. & F. R. R., due July 1, 1857	$35	$9,450		
91	" "	17 50	1,592 50		
31	" "	35	1,085		
22	" "	17 50	385		
3	" "	52 50	157 50		
1	" "		105		
1	" "		54 43		
1	" "		21		
1	" "		14		
1	" "		613		
500	city of Providence	30	15,000		
497	" Hartford	30	14,910		
				42 780 56	
414	H. P. & F. R. R. Co., due July 1, 1857	35	14,490		
2	" "	17 50	35		
				14,525	
400	" Jan. 1, 1858	35	14,000		
1	" "		17 50		
				14,017 50	
384	" July 1, 1858	35	13,440		
409	" Jan. 1, 1857	35	14,315		
2	" "	17 50	35	14,350	
$42,780.56 charged in acc. prior to June 1, 1859					held as collateral to acc.
14,525 " " " 1, 1859					
14,017.50 " " May 22, 1860					
13,440 " " " 22, 1860					
14,350 not charged.					

329 *H. P. & F. R. R. Co. coupon acc. in acc. with A. & W. Sprague.* DR.

1856.				
Dec.	30.	To cash	$18,000	
	31.	"	10,650	
1857.				
Jan.	1.	418 coupons (our bonds)	14,612 50	
	5.	cash	5,000	
	8.	"	4,600	
	9.	"	2,000	
	3.	"	5,000	
July	6.	"	2,887 50	
				$62,750

CR.

1857.				
Jan.	1.	By net of note	61,960	
July	6.	cash from Exchange Bank	261 76	
	6.	balance account with Hoyt, Tillinghast & Co.	62 74	
	6.	balance to new account	465 50	
				$62,750
1857.				
July	6.	To balance of account as cash	465 50	
1868.				
May	27.	10 years 10 months and 21 days int. to date @ 7 per ct	354 90	
				$820 40

CR.

May	27.	By transfer to general account	$820 40

330 (Folio 1.) *Samuel Hall, jr., esq., Treasurer of the Boston, Hartford & Erie R. R. Co., in account current and int. account to March 20, 1869, with A. G. Farwell & Co.*

1868.							
	John D. Washburn, agt. in Worcester:						
Sept. 21	By cash Sept. 19, '68, in Ætna Ins. Co., Hartford, Ct		5,962	Sept. 21, '68	5.27		175 88
24	By cash		50,000	24	5.24		1,450
28	"		50,000	28	5.20		1,416 67
29	"		100,000	29	5.20		2,833 33
Oct. 12	"		20,000	Oct. 12	5.8		526 67
21	"		50,000	21	4.27		1,225
22	"		20,000	22	4.26		486 67
28	"		20,000	28	4.20		466 67
29	"		15,000	29	4.20		350
Nov. 3	"		20,000	Nov. 3	4.17		456 67
6	"		40,000	6	4.14		893 33
7	"		30,000	7	4.13		665
7	"		13,000	7	4.13		288 16
9	"		20,000	9	4.11		436 67
10	"		25,000	10	4.10		541 66
18	"		20,000	18	4.2		406 67
19	"		20,000	19	4.1		403 33
Dec. 2	"		25,131 25	Dec. 2	3.18		452 35
12	"		15,000	12	3.8		245
17	"		10,179 87	17	3.3		157 79
28	"		50,000	28	2.20		666 67
29	"		42,000	29	2.20		560
30	"		30,000	30	2.20		400
31	"		30,000	31	2.20		400
Jan. 5, '69	"		15,000	Jan. 5, '69	2.15		187 50
8	"		3,132 83	8	2.12		37 59
9	"		127,203	9	2.11		1,505 23
Feb. 10	"		25,000	Feb. 10	1.10		166 67
10	"		5,000	10	1.10		33 33
Mar. 8	"		25,000	Mar. 8	.12		50
17	"		25,000	17	.3		12 50
18	"		40,000	18	.2		13 33
Nov. 14, '68	To cash	10,000		Nov. 14, '68	4.6	210	
16	"	12,000		16	4.4	248	
18	"	5,000		18	4.2	101 67	
20	"	8,000		20	4	160	
20	"	5,517 54		20	4	110 36	
331 (Folio 2.)	Am'ts carried forward	40,000 54	986,608 95			830 03	17,910 34
1868.							
	Am'ts brought forward	40,517 54	986,608 95			830 03	17,910 34
Dec. 1	To cash	10,000		Dec. 1, '68			
1	" W. C. E., acc. Munson	20,000		1	3.19	829 67	
1	" Mark Healey	10,000		1			
1	" Ins	6,221 04		1			
2	"	10,000		2	3.18	180	

	8	"	acc. Dillon	71,502 05			8	3.12	1,215 53		
	10	"	W. C. E., acc. Munson	10,000			10	3.10	166 67		
	12	"	Kidder, Peabody & Co	6,355 23			12	3.8	103 81		
	14	"		11,787 50			14	3.6	188 61		
	23	"	Munson	25,000			23	2.25	354 16		
Jan.	4, '69	"		7,600		Jan.	4, '69	2.16	96 27		
	5	"	remitted to N. Y. for engine	12,812 50			5	2.15	160 15		
	8	"		21,250			8	2.12	255		
	11	"		40,000			11	2.9	690		
	11	"		20,000			11				
	12	"		13,956 50			12	2.8	158 18		
	14	"		50,000			14	2.6	825		
	14	"		25,000			14				
	16	"		30,000			16	2.4	320		
	21	"		5,000			21	1.27	47 50		
	25	"		10,000			25	1.23	88 33		
	28	"		5,000			28	1.20	333 33		
	30	"		35,000			30				
Feb.	1	"		12,614 90		Feb.	1	1.19	103		
	4	"		3,000			4	1.16	115		
	4	"		12,000			4				
	6	"		13,500			6	1.14	99		
	9	"		80,266 67			9	1.11	548 49		
	10	"		5,510 74			10	1.10	36 74		
	11	"		23,000			11	1.9	149 50		
	17	"		25,000			17	1.3	137 50		
	18	"		9,000			18	1.2	154 67		
	18	"		20,000			18				
	19	"		40,000			19	1.1	232 50		
	19	"		5,000			19				
	24	"		25,000			24	.24	100		
332	(Folio 3.)		Am'ts carried forward	770,894 67	986,608 95				8,518 64	17,910 34	
	1869.		Am'ts brought forward								
Feb.	25	To cash		770,894 67	986,608 95				8,518 64	17,910 34	
Mar.	9	"		4,000		Feb.	25, '69	.23	15 34		
	9	"		60,000		Mar.	9	.11	155 84		
	10	"		25,000			9				
	20	W. C. Eayrs, tr., for bal. memos. transf*		14,000			10	.10	23 34		
	20	"	" int. on above to date, at 6 per ct. as per acc. ren'd	370,750							
	20	By int. bal. on acc. to date, 6 per ct.		7,349 18							
	20	balance forwar			9,197 18				9,197 18		
					256,187 72						
	20	To balance due A. G. Farwell & Co. cash this day		1,251,993 85	1,251,993 85				17,910 34	17,910 34	
				256,187 72							

E. & O. E. BOSTON, March 20, 1869.

* See folio 11 of this copy.

333 (Folio 4.) *Samuel Hall, jr., treas. of the Boston, Hartford & Erie R. R. Co., in account-current and int. account to July 20, '69, with A. G. Farwell & Co.*

						M. D.		
Mar.	20, '69	To balance per mem	256,187 72		Mar. 20, '69	4	5,123 75	
Apr.	1	To cash	10,000		Apr. 1	3.19	181 67	
	12	"	23,500					
	12	"	20,000		12	3.8	710 50	
	13	"	17,000		13	3.7	274 83	
	20	"	69,000		20		1,035	
	30	"	1,000		30	2.20	13 33	
May	1	"	6,000		May 1	2.19	79	
	3	"	10,000		3	2.17	128 33	
	5	"	5,000		5	2.15	62 50	
	6	"	41,033 34		6	2.14	506 06	
	11	"	61,000		11	2.9	701 50	
	12	"	13,000		12	2.8	147 33	
	13	"	47,000					
	13	"	5,000		13	2.7	580 67	
	20	"	42,000		20	2	420	
	24	"	4,096		24	1.26	38 22	
	26	"	3,000		26	1.24	27	
June	14	"	200,000		June 14	1.6	1,200	
	15	" B. S. Iron Co	50,000		15	1.5	291 67	
	18	"	20,000					
	18	"	17,000		18	1.2	197 33	
	19	"	22,667 14		19	1.1	117 11	
	21	"	50,000		21	29	241 67	
	22	"	5,000		22	28	23 33	
	25	"	25,000		25	25	104 16	
	28	"	1,000					
	28	" B. S. Iron Co	50,000		28	22	187	
	30	"	20,000					
	30	"	1,224 18		30	20	70 73	
July	1	"	32,000					
	1	"	15,000		July 1	19	148 83	
	2	"	50,000		2	18	150	
	3	"	50,000					
	3	"	50,000		3	17	283 33	
	10	" B. S. Iron Co	20,000		10	10	33 34	
	13	"	9,000		13	7	10 50	
334 (Folio 5.)		Am'ts carried forward	1,321,708 38				13,088 69	
		Am'ts brought forward	1,321,708 38				13,088 69	
July	14, '69	To cash	16,060 12		July 14, '69	6	16 06	
	15	"	12,750		15	5	10 63	
	16	" B. S. Iron Co	32,688 77		16	4	21 80	
	17	"	15,000		17	3	7 50	
Apr.	14	By cash		30 000	Apr. 14	3.6		480
June	10	"		7,988 33	June 10	1.10		53 25
	10	" due August 13		60,000	Aug. 13	24	240	

	13	" " " 17		60,000		17	.28	280			
	23	"		30,360		June 23	.27			136	62
	28	"		25,000		28	.22			91	67
	30	"		62,500		30	.20			208	33
July	20	To int. bal. on acc. to date, at 12 per ct	25,389 62					13,664	68	969	87
		By balance forward		1,147,748 56				969	87		
								12,694	81		
			1,423,596 89	1,423,596 89				2			
								25,389	62		
July	20	To balance, cash this day	1,147,748 56								

E. & O. E. BOSTON, July 20, 1869.

A. G. FARWELL & CO.,
Per GEO. W. CUMMINGS.

335 (Folio 6.) *Samuel Hall, jr., esq., treasurer of the Boston, Hartford & Erie R. R. Co., in account-current and int. account to October* 1, 1869, *with A. G. Farwell & Co.*

July	20, '69	To balance, as cash, per acc. ren'd this day	1,147,748 56		July	20, '69	2.11	13,581	69		
June	11	To cash not included in above acc	9,104 61		June	11	3.20	166	90		
	8	" " " "	33,666 67			8	3.23	634	06		
	30	" " " "	125,000			30	3.1	1,895	38		
July	2	"	41,250		July	2	2.29	611	88		
	23	"	27,000			23	2.8	306			
	27	"	5,000			27	2.4	53	33		
	28	"	30,000								
	28	"	7,000			28	2.3	452	45		
	28	"	6,091 45								
	30	"	1,382 58			30	2.1	14	06		
Aug.	5	"	30,350		Aug.	5	1.26	283	26		
	6	"	10,000			6	1.25	235	72		
	6	"	15,716 16								
	9	"	1,500			9	1.22	13			
	12	"	2,737 62			12	1.19	22	34		
	12	"	134,051 02			12	1.19	1,094	74		
	13	"	25,000			13	1.18	200			
	13	"	60,000			13	1.18	480			
	16	"	50,000			16	1.15	375			
	17	"	100,000			17	1.14	733	33		
	17	"	60,000			17	1.14	440			
	18	"	25,000			18	1.13	250	83		
	18	"	10,000								
	20	"	8,000			20	1.11	54	67		
	21	"	96,671 11			21	1.10	644	47		
	23	"	9,602 64			23	1.8	60	81		
	27	"	50,529 60			27	1.4	286	34		
	30	"	6,475			30	1.1	33	44		
	31	"	48,714			31	1.1	251	69		
Sept.	1	"	2,000		Sept.	1	1	10			

	3	"	5,306 37						
	3	"	25,000				3	.28	141 43
	4	"	12,000				4	.27	54
	7	"	6,000				7	.24	24
	9	"	2,178 18				9	.22	7 99
	10	"	4,221 74						
	10	"	10,000				10	.21	49 77
		Am'ts carried forward	2,244,297 31						23,463 03
336 (Folio 7.)		Am'ts brought forward	2,244,297 31						23,463 03
Sept.	10, '69	To cash	50,529 60		Sept.	10, '69		.21	176 84
	11	"	22,640				11	.20	75 46
	15	"	1,000						
	15	"	4,000				15	.16	13 34
	16	"	33,686 40						
	16	"	6,679 67				16	.15	100 91
	17	"	19,860				17	.14	46 34
	20	"	32,638 89						
	20	"	25,000						
	20	"	8,786 09				20	.11	121 77
	21	"	175,000				21	.10	291 67
	24	"	101,850				24	.7	118 82
	25	"	800				25	.6	80
	28	"	8,115 24				28	.3	4 06
July	29	By cash		54,000	July	29		2.2	558
Aug.	13	"		300,000	Aug.	13		1.18	2,400
	16	"		200,000		16		1.15	1,500
	31	"		300,000		31		1.1	1,550
Sept.	2	"		10,000	Sept.	2		.29	48 34
	4	"		100,000		4		.27	450
	7	"		20,000		7		.24	80
	17	"		200,000		17		.14	466 67
	18	"		9,000		18		.13	19 50
	20	"		100,000		20		.11	183 34
	24	"		3,000		24		.7	3 50
	27	"		25,000		27		.4	16 67
Oct.	1	To in't. balance in acc. to date at 12 per ct	34,274 04						24,413 04
	1	By balance forward		1,448,157 24					7,276 02
Oct.	1	To balance, cash this day	2,769,157 24	2,769,157 24					17,137 02
		E. & O. E.	1,448,157 24						2
									34,274 04

7,276 02

BOSTON, *October* 1, 1869.

A. G. FARWELL & CO.,
Per G. W. CUMMINGS.

337 (Folio 8.) *Boston, Hartford & Erie R. R. Co., in account-current and int. account to December* 1, 1869, *with A. G. Farwell & Co.*

Oct.	1, '69	To balance as per acc. ren'd S. H., jr., tr., cash this day		1,448,157 24		Oct.	1, '69	2		14,481 57	
Sept.	21	To cash, N. C. M. notes, &c.		67,115 07		Sept.	21	2.10		783	
Oct.	1	"		1,500		Oct.	1	2		15	
	2	"		1,000							
	2	"		5,000			2	1.29		59	
	4	"		500			4	1.27		4 75	
	5	"		4,300							
	5	"		615			5	1.26		45 85	
	6	"		2,656 08			6	1.25		24 34	
	8	"		500			8	1.23		4 42	
	16	"		20,260			16	1.15		151 95	
	19	"		7,117			19	1.12		49 81	
	21	"		50,529 60			21	1.10		336 86	
	27	"		40,000			27	1.4		226 67	
	30	"		14,989 23			30	1.1		77 44	
Nov.	3	"		17,000							
	3	"		38,637 31		Nov.	3	.28		259 64	
	4	"		39,655 99							
	4	"		2,500							
	4	"		5,205			4	.27		213 12	
	5	"		4,200			5	.26		18 20	
	6	"		2,000							
	6	"		75,000			6	.25		320 83	
	9	"		3,630			9	.22		13 31	
	11	"		4,500			11	.20		15	
	15	"		500			15	.16		1 34	
Oct.	2	By cash			20,000	Oct.	2	1.29			196 67
	6	"			15,000		6	1.25			137 50
	16	"			19,688 88		16	1.15			147 65
	19	"			100,000		19	1.12			700
	21	"			155,000		21	1.10			1,033 33
	22	"			80,000		22	1.9			520
Nov.	4	"			5,000	Nov.	4	.27			22 50
	29	"			28,000		29	.2			9 33
	30	To int. bal. on acc. to Dec. 1, at 12 per ct.		22,670 24						17,102 10	2,766 98
	30	By balance			1,463,048 88					2,766 98	
				1,885,737 76	1,885,737 76					14,325 12	
Nov.	30	To balance, cash Dec. 1, '69. E. & O. E.		1,463,048 88						2	
										28,670 24	

BOSTON, Nov. 30, 1869.

A. G. FARWELL & CO.,
Per GEO. W. CUMMINGS.

338 (Folio 9.) *Boston, Hartford & Erie R. R. Co., in acct. current with A. G. Farwell & Co.*

Dec. 1, '69	To balance as per acc. rend. cash this day		1,463,048 88	
1	cash paid S. H., jr., treas		75	
1	By cash rec'd of J. S. Eldridge			225,000
1	" "			10,000
1	" balance rec'd for sales stock from H. N. F			49,608 52
1	" balance forward			1,178,515 36
1	To balance, cash this day		1,463,123 88	1,463,123 88
			1,178,515 36	

E. & O. E.—BOSTON, Dec. 1, 1869.

A. G. FARWELL & CO.,
Per GEO. W. CUMMINGS.

SUPPLEMENTARY ACCOUNT.

339 (Folio 10.) *Boston, Hartford & Erie R. R. Co., in account current with A. G. Farwell & Co.*

Dec. 1, '69	To balance as per acc. ren'd		1,178,515 36	
1	balance stock acc. current rend'd		400,520 86	
1	advance by G. W. Long & Co. on 4,000 shrs. stocks Mar. 10 and Apr. 14		60,000 00	
1	By notes rec. Gardner Baker & Co.'s notes Sept. 27, 30, and Oct. 4 a 3 m. d. $20M ea			60,000
1	balance forward			1,579,036 22
			1,639,036 22	1,639,036 22
Dec. 1	To balance cash Dec. 1		1,579,036 22	
1	interest 4m. 3d. @ 8 per ct. on $459,678 74		12,564 53	
1	" 5m. 3d. @ 8 per ct. on 459,678 74		15,629 05	
1	" 6m. 3d. @ 8 per ct. on 459,678 74		18,693 60	
1	By notes rec. S. Hall, jr., tr's note to own order, Dec. 1, on dem. and int. 8 per ct			200,000
1	" " " " " " 1, 4 m. d			472,243 27
1	" " " " " " 1, 5 "			475,307 79
				478,372 34
			1,625,923 40	1,625,923 40

E. & O. E.—BOSTON, Dec. 1, 1869.

A. G. FARWELL & CO.,
Per GEO. W. CUMMINGS.

* See folio 12 of this copy.

340 (Folio 11.) *M. W. C. Eayrs, trustee, in acct. current & int. acct. to March 20, '69, with A. G. Farwell & Co.*

Sept.	18, '68	To cash, per rec't	20,000		Sept.	18, '68	6.2	606 67	
	29	" "	80,000			29	5.20	2,266 67	
Oct.	21	" "	50,000		Oct.	21	4.27	1,225	
Nov.	16	" "	20,000		Nov.	16	4.4	413 34	
	17	" "	20,000			17	4.3	410	
	27	" "	20,000			27	3.21	370	
Dec.	14	" "	4,000		Dec.	14	3.6	64	
	17	" "	30,000			17	3.3	465	
	24	" "	20,000			24	2.24	280	
	30	" "	25,000			30	2.20	333 33	
Jan.	1, '69	" "	25,000		Jan.	1, '69	2.19	329 17	
	1	" "	15,000			1	2.19	197 50	
	7	" "	20,000			7	2.13	243 33	
	12	" "	10,000			12	2.8	113 33	
Mar.	3	" "	4,000		Mar.	3	.17	11 34	
	8	" "	17,750			8	.12	35 50	
	11	By cash		10,000		11	.9		15
	20	To interest balance on acc. to date @ 6 per ct.	7,349 18						7,349 18
	20	By Sam'l Hall, jr., tr., interest transferred		7,349 18					
		" " " balance memd., "		370,750					
			388,099 18	388,099 18				7,364 18	7,364 18

E. & O. E.—BOSTON, Dec. 1, 1869.

A. G. FARWELL & CO.,
Per GEO. W. CUMMINGS.

341 (Folio 12.) *Boston, Hartford & Erie R. R. Co., in acct. current and int. acct. to Dec. 1, 1869, at 12 per ct., with A. G. Farwell & Co., for advances to W. C. Eayrs & Rob't Farley on collateral stock.*

Matu. of notes.					Int. from—	Time.	Interest.	Dr.	Cr.
July	29	To W. C. Eayrs' notes a 60 d. d. vs. 2,000 sh'r's B. H. & E. RR		30,000					
	29	" 2,000 "		30,000	May 27, '69				
	29	" 2,000 "		30,000	27				
August	6	" 2,000 "		30,000	27	6.4	3,680		
	18	" 1,000 "		15,000	27				
	19	" 1,000 "		15,000	June 4	5.27		442 50	
	23	" 2,000 "		30,000	16	5.15		412 50	
	24	" 2,000 "		30,000	17	5.14		820	
	24	" 1,500 "		25,500	21	5.10		800	
		" 1,000 "		15,000	22				
					22	5.9	1,073 25		

	26	"	1000	"		15,000					
	26	"	2000	"		30,000			24	5.7	1,177 50
	27	"	3000	"		45,000			24		
	31	"	3000	"		45,000			25	5.6	1,170
Sept.	2	"	2000	"		30,000			29	5.2	1,140
	2	"	2000	"		30,000		July	1		
	7	"	1000	"		30,000			1	5	2,250
	9	"	1000	"		15,000			1		
	12	To Robt Farley's notes a 2md	2000	"		15,000			6	4.25	362 50
	13	"	1000	"		32,000			8	4.23	357 50
	18	To W. C. Eayrs' notes a 2md	1000	"		16,000			9	4.22	757 34
	22	"	3000	"		16,000			10	4.21	752
	22	"	1000	"		45,000			10		
	24	"	1000	"		15,000			15	4.16	1,020
	29	"	2000	"		15,000			19	4.12	660
October	24	To Robt Farley's notes a 2md	2000	"		30,000			19		
November	7	"	1000	"		30,000			21	4.10	650
	9	"	1000	"		16,000			26	4.5	625
December	10	To W. C. Eayrs' notes a 2md	1000	"		16,000		Aug.	21	3.10	666 67
			1000	"		16,000		Sept.	4	2.27	232
			50,500	"		15,000			6	2.25	226 67
								October	7	1.24	135
December	1	To interest amt. on acct. to date a 12 per ct									19,010 43
	1	By 50,500 shares B. H. & E. R. R. taken to acc. a $10				38,020 86					2
	1	To guarantee on 10,000 shares do. to H. J. Gardner & N. C. Munson a $10					505,000				38,026 86
	1	By balance forward				100,000					
							400,520 86				
December	1	To balance, cash this day				905,520 86	905,520 86				
						400,520 86					

E. & O. E. BOSTON, Dec. 1, 1869.

A. G. FARWELL & CO.
Per GEO. W. CUMMINGS.

342

Statement on account and notes of A. G. Farwell & Co. vs. The Boston, Hartford & Erie Railroad Company.

Notes taken of the corporation, against which are $730 M. Boston, Hartford & Erie Railroad 7s, new, as collateral, viz:

Co.'s note, own order, by S. H., jr., tr., approved J. S. E., prest., Dec. 1, '69, on dmd. & int. @ 8 pr. ct.							
"	"	"	"	4	m. d., cash	April 1-4 1870	200,000 00
"	"	"	"	5	"	May 1-4 "	472,243 27
Co.'s note, order A. G. F. & Co, by S. H., jr., June 30, '69, on dmd. & int. @ 12 pr. ct., cash				6	"	June 1-4 "	475,307 79
							478,372 34
We hold in addition Co.'s note, Feb. 5, 1870, 2 m. d., cash, April 8, 1870, to own order, vs. Co.'s recpt., to Noble H. Hill, for 25 bonds as collateral							50,000 00
Co.'s 5 notes to own order, $10 M. each and int. @ 7 pr. ct., Sept. 25, 1869, 90 d. d., cash, Dec. 27, against which were 100 bonds as collateral							10,000 00
Co.'s note by S. H., jr., tr., to order Henry J. Gardner, and indorsed Oct. 12, 1869, 6 m. d., cash, Apl. 5, 1870, vs. Co.'s receipt for 5000 shares stock							50,904 16
Deduct amt. charged the Co. in acct. rendered Dec. 1, 1869, for our guarantee of above, cash Dec. 1							115,000 00
							50,000 00

1,675,923 40

Int. on $50 M. Dec. 1, to April 5, @ 8 pr. ct	1,377 79			
Balance cash, April 5, 1870		51,377 79		
Co.'s 5 notes by S. H., jr., tr., to order N. C. Munson, $23 M. each, and indorsed Oct. 11, 1869, 6 m. d., cash April 14, 1870, vs. Co.'s receipt for 5000 shares stock		115,000	63,622 21	
Deduct amt. charged the Co. in acct. rendered Dec. 1, 1869, for our guarantee of above cash Dec. 1	50,000 00			
Int. on $50 M., Dec. 1, to April 14, @ 8 per cent	1,477 78			
Balance cash, April 14, 1870		51,477 78	63,522 22	188,048 59
We also hold the following notes, without any collateral:				
Co.'s note, own order, by S. H., jr., tr., approved J. S. E., prest., Feb. 26, '70, 12 m. d., cash Mar. 1, '71			191 25	
" " " " Mar. 5 12 " " " 5-8			542 50	
" " " " " 22 12 " " 22-25			5,770 76	
" " " " " 26 12 " " 26-29			3,050 34	
" " " " June 8 12 " " 8-11			2,277 71	
" " " " " 8 12 " " 8-11			2,277 71	
343 Amounts carried forward			14,110 27	1,863,971 99
Amounts brought forward			14,110 21	1,863,971 99
Co.'s note, own order, by S. H., jr., tr., appv'd J. S. E., prest., June 29, 1870, 12 m'd., cash July 2, '71			2,146 86	
" " " " " 29 " 12 " "			2,146 86	
				18,403 99
In addition to above, we have paid in cash, as follows:				
To Thomas Richardson on account, we holding his receipts to us for same, viz:				
1869.				
Dec. 7 To cash per receipt			500 00	
9 " "			500 00	
10 " "			600 00	
18 " "			500 00	
1870.				
Jan. 6 " "			1,000 00	
14 " "			200 00	
31 " "			600 00	
				3,900 00
We have paid Broad & Ward, contractors, per their receipts, viz:				
1859.				
Dec. 10 To cash acct., work and materials, per receipt to Co. Nov. 24 1869, and indorsed			5,000 00	
1870.				
Jan. 3 To cash, per receipt to us			1,000 00	
6 "			500 00	
26 "			1,500 00	
				8,000 00
1869.				
We have also paid sundry other amounts, viz:				
Dec. 17 To cash paid Thos. E. Graves' draft on B. H. & E. R. R. Co., on acct. salary				1,000 00
1870.				
Jan. 26 " Edw. S. Phibrick, State engineer's bill, salary, &c				1,321 70
Feb. 23 " H. S. Parry, on acct. per receipt			500 00	
Mar. 1 " " "			500 00	
				1,000 00
1869.				
Nov. 26 " J. J. Shaw, per his memorandum check				800 00

REC. 241—18

Dec.	3	"	B. H. & E. R. R. Co. by S. H., jr., tr., acct. G. W. Phillips, attorney's dft. for house and lot, taken at appraisal			
	3	"	B. H. & E. R. R. Co. by H. S. B., asst. tr., acct. B. F. Hancox, engineer, dft			9,600 00
	4	"	P. Jarrett, engineer's dft., at suit on B. H. & E. R. R. Co			1,702 01
	4	"	H. G. Reed " bill, Dec. 1			4,200 00
	7	"	B. H. & E. R. R. Co. by H. S. B., asst. tr., acct. Thos. Richardson, dft., acct. taxes			397 38
	9	"	G. W. Phillips' dft. on B. H. & E. R. R. Co., for land damage			1,864 35
	9	"	B. H. & E. R. R. Co., for revenue stamps and int. acct			250 00
	13	"	" acct. office expenses			1,898 64
344	1870.		G. W. Phillips' dft. on B. H. & E. R. R. Co., for land damage			750 00
Jan.	29	"	National Bank-Note Co., bill engraving, &c			135 00
Feb.	14		B. H. & E. R. R. Co. by H. S. B., asst. tr., acct. P. Jarrett, engineer's dft			
			Amounts carried forward		24,597 38	1,898,397 68
			Amounts brought forward		24,597 38	1,898,397 68
344	1870.					
Feb.	5	To cash paid B. H. & E. R. R. Co. for int. to Noble H. Hill		580 00		
	15	"	"	3,500 00		
	21	"	on acct. their note to Ballou & Mifflin, settled		210 00	
Mar.	4	"	" int. on note renewed		8,000 00	
			Haven's note renewed		203 33	
Feb.	19	"	half W. C. Eayrs' note $15 M. to Thos. Rice, vs. 30 bonds, as collat'l		305 00	
			Less net pro. 15 bonds @ 43		24,597 38	33,315 61
June	4	To cash paid, our note at Howard N. Bank, given in place of W. C. Eayrs' vs. 40 bonds		7,500		
		Int. 4 mo. 3 d. @ 7 per ct		6,450		
		Accrued int. on W. C. Eayrs' note			1,050 00	
		Less net pro. 40 bonds sold		20,000 00		
		Balance cash June 4, 1870		478 33		
		And int. to July 14, 1870, @ 12 per ct., 6 mo. 20 d		190 57		
July	14	To cash paid our note given in exchange for W. C. Eayrs' note due Dec. 24, '69, vs. 125 bonds			20,668 90	
		Less net pro. 125 bonds sold @ 27 1-2			13,572 00	
		Balance cash July 14, 1870				7,096 90
Aug.	29	To cash paid 2-5 B. H. & E. R. R. Co.'s note and int		52,500 00		
		vs. 10 bonds, 2-5		3,500 00		
		Less net pro. 4 bonds sold			56,000 00	
		Balance cash Aug. 29, 1870			34,375 00	
		Gross amount due, interest to be added from cash time as above				21,625 00
		Deduct net proceeds 830 bonds, held as collateral, as follows, viz:			5,215 55	
1869.						
Dec.	3	By cash received for net pro. 18 M. B. H. & E. R. R. 78, @ 46 3-4 net			2,086 22	
	6	" " 65 " " @ 46 7-8 "			1,015 00	
1870.						1,071 22
Mar	10-12	" " 100 " " @ 41 1-2, 42 3-4, "				30,843 12
	19	" " 20 " " @ 42 1-4, 44 "				1,962,556 41
						8,415 00
						30,468 75
						42,093 01
						8,624 13

Mar. 23	"	"	6	"	"	@ 39 3-4,	"		2,384 76	
Mar. 28 } Apr. 13 }	"	"	199	"	"	@ 32 3-4, 37 3-4,	"		69,482 16	
June 11	"	"	45	"	"	@ 33 92,	"		15,268 00	
23	"	"	66	"	"	@ 31 3-4, 33 3-4,	"		21,823 75	
July 14	"	"	100	"	"	@ 28	"		28,000 00	
14	"	"	75	"	"	@ 27 1-2,	"		20,625 00	
14	"	"	25	"	"	@ 27 1-4, 3-8,	"	less com'n, &c	6,793 06	
Amounts carried forward			719	M.					253,946 62	1,962,556 41

									Cr.	Dr.
345 1870.	Amounts brought forward,		719	M.	B. H. & E. R. R. 7s, netting				253,946 62	1,962,556 41
July 16	By cash rec'd for net pro.		25	"	"	@ 27	less coms., &c		6,718 07	
20	"	"	30	"	"	@ 27 1-4,	"		8,136 68	
21	"	"	20	"	"	@ 27 1-4,	"		5,424 45	
Aug. 3	"	"	36	"	"	@ 26 3-4,	"		9,629 03	
			830	bonds, netting						283,854 85
	Net amount due, interest to be duly reckoned									1,678,701 56
1868.										
May 27	We paid cash to A. & W. Sprague for their claim against the Hartford, Providence and Fishkill Railroad Company, with their authority to collect same									161,818 06
29	We paid cash for Francis M. Andrews' judgment of March 9, 1867, vs. Boston, Providence & Fishkill Railroad Company, with authority to collect								370 54	
	We paid cash for O. G. Watterman and Daniel Tillinghast's judgment, March 9, 1867, vs. Hartford, Providence & Fishkill Railroad Company, with authority to collect same								8,798 48	
										9,169 02
										170,987 08

Against this amount we received as collateral:
2123 coupons Hartford, Providence & Fishkill Railroad,
500 " city of Providence, and
7349 shares Boston, Hartford & Erie Railroad stock.
H. N. Farwell holds a deed in his name of land and buildings in Putnam, Conn., where the depot stands.

346 EXHIBIT 2.

List of notes payable Hartford, Providence & Fishkill R. R. Company.

To whom.	When due.	Amount.
A. & W. Sprague		$167,000
Chapman & Hyde		16,500
Rice, Waterman & Tillinghast	May 9, 1858	1,248
Do	" 30	590 59
Boston & P. R. R. Corporation	Oct. 18	955 03
H. F. Sumner	July 12, 1855	10,600
Erastus Smith	Feb. 10, 1859	200
E. A. Bulkley	Jan. 17, 1858	513
C. J. McCurdy	Jan. 31, 1858	459 38
L. F. S. Foster	Jan. 24, 1858	258 83
C. J. McCurdy	Jan. 4, 1858	304 50
E. K. Derby	Jan. 18, 1858	400
R. Waterman & F. Tillinghast, 2 per ct. 750,846 50	Feb. 3, 1858	2,346 50
Hungerford & Cone	Feb. 1, 1858	1,200
F. M. Andrews	Feb. 24, 1858	223 01
C. & S. Harris	Feb. 13, 1858	2,500
James A. Potter, agent	Feb. 14, 1858	271 03
S. Lincoln & Co	Feb. 20, 1858	503 86
Case, Lockwood & Co	Feb. 27, 1858	203 97
John Osborne	Feb. 12, 1858	292 84
Wm. S. White	Feb. 12, 1858	353 24
Rice, Waterman & T., 1,235,279 50	Mar. 17, 1858	1,514 50
N. Washburn	Mar. 6, 1858	398 35
Case, Tiffany & Co	Mar. 7, 1858	1,029 39
B. E. Post	Mar. 10, 1858	297 52
Albert Daily	Feb. 13, 1858	505 43
E. G. Ripley & Co	Mar. 24, 1858	221 18
Stanton & Hyde	April 25, 1858	415 04
Sales, Miller & Simons	April 21, 1858	412 11
Bissell E. Post	April 2, 1858	88 65
		$211,805 96

EXHIBIT 5.

$8239. PROVIDENCE, *May* 28, 1868.

At sight pay to the order of Hon. Samuel Currey eight thousand two hundred and thirty-nine dollars, being amount of claims of Waterman, Tillinghast, and F. M. Andrews, assigned to you.

Yours, &c.,

THOMAS E. GRAVES.

To A. G. FARWELL & Co., *Boston, Mass.*

347 EXHIBIT 9.

(Copy.)

Received, Providence, May 27, 1868, from A. & W. Sprague following-described coupons, held by them as collateral security to account of theirs against Hartford, Providence & Fishkill Railroad Company, said account having been purchased by me this day:

270	Hartford Prov. & Fishkill R. R. Co., due July 1, 1857			$35	$9,450	
91	"		"	17 50	1,592 50	
31	Hartford & Providence R. R.		"	35	1,085	
25	"		"	17 50	437 50	
3	"		"	52 50	157 50	
1	"	ea. $105, $54 43	"		159 43	
1	"	ea. $21, $14, $6 13	"		41 13	
						$12,923 16
500	city of Providence		"	30		15,000
497	city of Hartford		"	30		14,910
						$42,833 16

414	Hartford, Prov. & Fishkill R. R. Co.	"	.....	35	14,490	
2	"	"	.....	17 50	35	
						14,525
400	"	due January 1, 1858	.....	35	14,000	
1	"	"	.....		17 50	
						14,017 50
384	"	due July 1, 1858	.....	35		13,440
	Total					$84,816 66

HENRY N. FARWELL,
By THOMAS E. GRAVES,
His Attorney.

May 28, 1868.

348 Petitioners put in pleadings and decrees in the case of Ellis vs. Boston, Hartford & Erie Railroad Company, in senate document No. 74, 1871, and the subpœna issued in that case to H. N. Farwell, dated July 20, and in the officer's return of the service thereof on Farwell, dated July 21, 1871. Also the decree of the court in the Ellis case, that the bill be taken for confessed against Farwell, passed Feb. 5, 1871.

After the arguments were concluded, the master requested to be shown the bond for $2,000,000 given to the State of Massachusetts by H. N. Farwell and others dated March 11, 1869, and a copy of the record of the petition by Shubael Hutchins, Geo. M. Bartholomew, and John Hooker, dated Feb. 18, 1867, to the superior court holden at Hartford the second Tuesday of March, 1867, for advice and authority in respect to the disposal of the debt stock held by them as trustees; the order of notice thereon to A. & W. Sprague and others, dated Feb. 18, 1867, served Feb. 28, 1867; and the decree of the court upon the same passed at its September term, 1868.

The bond for $2,000,000 as printed in house document No. 49, 1870, and said petition and decree may be referred to and used in the case. The pamphlet entitled "Papers relating to the State Loan," and all papers printed therein, may be referred to and used in the case.

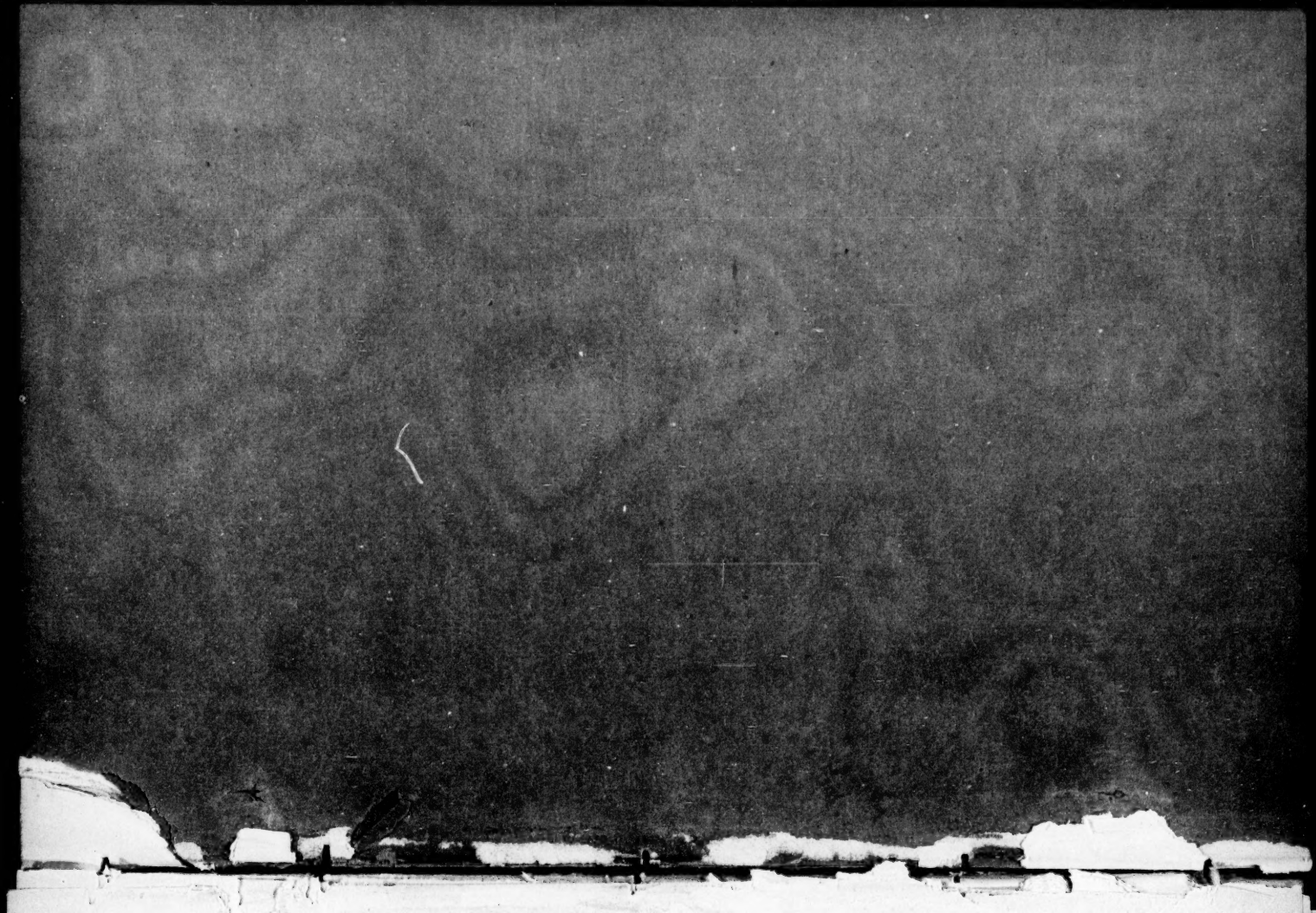
Copy of H. P. & F. Coupon.

INTEREST WARRANT.

Mortgage and convertible bond for thirty-five dollars, being half-yearly interest on bond No. 1697, of the Hartford, Providence & Fishkill Railroad Company, payable on the 1st day of July, 1857, at the office of the company in Hartford.

$35.00. E. M. BRIGHAM,
Treasurer.

(Indorsement on cover:) No. 241. Henry N. Farwell, plaintiff in error, vs. James W. Converse, Geo. M. Bartholomew, J. Graham Gardiner, receivers of the Boston, Hartford & Erie Railroad Co. Massachusetts sup. jud'l c't. Filed 14th October, 1873.



SUPREME COURT OF THE UNITED STATES.

No. ~~241~~ 3 /

HENRY N. FARWELL, PLAINTIFF IN ERROR,

vs.

JAMES W. CONVERSE ET AL.

STIPULATION OF COUNSEL AND ADDITION TO RECORD.

FILED MARCH 29, 1875.

1 Supreme Court of the United States.

HENRY N. FARWELL PLAINTIFF IN ERROR,
vs.
JAMES W. CONVERSE ET ALS., RECEIVERS.

In the above-entitled case it is agreed that the following-described papers referred to in the printed record and used as evidence in said case at the hearing before the supreme judicial court of Massachusetts, shall be sent up to the Supreme Court of the United States and printed as part of the record in said case. Referred to on page of the record.

Bill of complaint in the case of Ellis and others vs. Boston, Hartford & Erie Railroad Company and others, and the copy of the mortgage of said corporation to Berdell and others annexed thereto, printed in Senate document No. 74 of 1871, pages 10 to 36, inclusive. Page 34. " 277.

The decree of the supreme judicial court in said case of Ellis, made August 2nd, 1872, printed on pages 58 to 64, inclusive, of said Senate document.

2 Subpœna issued in that case to Henry N. Farwell and others, dated July 20th, 1870, and the officer's return of service thereon on Farwell, dated July 21, 1870; also the order of said court, made February 5, 1871, that said bill of complainant be taken for confessed against said Farwell. Page 34. " 277.

Act of the legislature of Connecticut, entitled "An act to incorporate the Boston, Hartford & Erie Railroad Company," approved June 25th, 1863. Page 77.

EXHIBITS A[1], B[1], & C[1].—Contract between the Hartford, Providence & Fishkill Railroad Company and the Boston, Hartford & Erie Railroad Company, dated August 28, 1863, and lease and deed of the same date by the former corporation to the latter of its road, franchise, and property, a printed copy of which contract, deed, and lease accompanied the master's report in this case. Page 77 " 256.

EXHIBIT S[1].—Act of the legislature of Rhode

3 Island, passed at January session, 1851, entitled "An act authorizing the city of Providence to loan its credit in aid of the Providence and Plainfield Railroad, and for its extension." Page 257.

EXHIBIT T[1].—Ordinance of the city of Providence in relation to the loan of the credit of the city of Providence in aid of the Providence and Plainfield Railroad, and for its extension. Page 257.

EXHIBIT U[1].—Copy of record of three mortgages from the Hartford, Providence and Fishkill Railroad Company, one to Benjamin Hoppin, Alexander Duncan, and Samuel Ames, trustees, dated September 24, 1852, another to Benjamin Hoppin, Alexander Duncan, & Samuel Ames, trustees, dated September 24, 1852; and a third to Benjamin Hoppin, Alexander Duncan, Samuel Ames, and Ezek. Aldrich, treasurer of the city of Providence, trustees, dated April 12, 1854. Page 257

4 EXHIBIT V[1].—Copy of record of mortgage from Hartford, Providence and Fishkill Railroad Company of its Connecticut property to Thomas S. Williams, William H. Imlay, and D. F. Robinson, trustees, dated August 25, 1849.

Page 258.

EXHIBIT W.—Copy of mortgage of Connecticut property by the Hartford, Providence and Fishkill Railroad Company to Thomas S. Williams, William H. Imlay, and D. F. Robinson, trustees, dated March 20, 1855.

Page 258.

EXHIBIT X.—Decree of supreme judicial court of Massachusetts, made April 24, 1871, confirming trustees and ordering transfer of property.

Receipt of the supreme judicial court of Massachusetts, April 3rd, 1872, and grounds and reasons of the decision.

Page 277

The letter of Alexander H. Bullock, governor, to the directors of the Boston, Hartford and Erie Railroad Company, dated September 24, 1868, and printed on pages 45 & 46 of the State-Loan Papers.

5

Page 277.

The reply thereto by the directors, dated September 26, 1868, printed on pages 47, 48, & 49, of the State-Loan Papers.

The assignment by the register, S. Lothrop Thorndike, to Charles S. Bradley, Charles R. Chapman, and George M. Barnard, assignees, referred to on page 149 of the record of this case, and marked X[1].

CAUSTEN BROWNE,
For Plffs. in Error.
J. D. BALL,
For Defts. in Error,
By B. B. & S.

6 To the honorable the justices of the supreme judicial court, in and for the county of Suffolk, in the commonwealth of Massachusetts:

Respectfully represent unto your honors, George Ellis, of the city, county, and State of New York, and Matthew Bolles and Michael S. Bolles, both of Boston, in said county of Suffolk, and both co-partners under the firm and style of Matthew Bolles and Company, all of whom bring this their bill of complaint in their own behalf, and in behalf of such holders and owners of the bonds secured by the mortgage hereinafter mentioned, as made to Robert H. Berdell, Dudley S. Gregory, and John C. Bancroft Davis, as shall become parties hereto as complainants, or join in the prosecution of this suit.

That your orator, the said Ellis, is owner of thirty of said bonds of one thousand dollars each, and of the matured and unpaid interest warrants thereon, payable on the first day of January now last past, and on the first day of July now current, respectively, and no part of which has been paid. That your orators, the said Matthew Bolles and Company, are owners of seventeen of said bonds, of one thousand dollars each, no part of which has ever been paid; that the Boston, Hartford and Erie Railroad Company is a corporation having its usual place of business in said Boston, and was created under the laws of the States of New York, Connecticut, Rhode Island, and Massachusetts, having for its ob-

ject the maintenance and operation of a railroad in these States respectively, running from Boston, in the State of Massachusetts, to Fishkill, in the State of New York.

That, on or about the day of March, A. D. 1866, the said railroad company, as your orators believe, resolved to make a mortgage upon their road and property, and to create, issue, and dispose of certain bonds, to be secured by said mortgage, and payable in the city of New York on the first day of July, A. D. 1900, for one thousand dollars each, and not to exceed the amount of twenty million dollars in
7 all, the said bonds to be issued for the purpose of providing for and retiring all the then existing mortgage-debt and prior liens upon the road and property of the said Boston, Hartford and Erie Railroad Company, and to complete and equip said road; that afterwards the board of directors of said Boston, Hartford and Erie Railroad Company, acting under authority of said resolution, authorized the creation and issue of twenty thousand bonds of one thousand dollars each, in form as follows:

No.——. $1,000

BOSTON, HARTFORD AND ERIE RAILROAD COMPANY.

Know all men by these presents, that the Boston, Hartford and Erie. Railroad Company acknowledges itself indebted unto Dudley S. Gregory, or bearer, in the sum of one thousand dollars lawful money of the United States, which sum it promises to pay at its office or agency in the city of New York, on the first day of January, in the year one thousand nine hundred, with interest at the rate of seven per centum per annum, payable semi-annually, on the first days of January and July in each year, on the presentation and delivery of the proper annexed interest-warrants.

This bond is one of a series of twenty thousand bonds of even date herewith, issued for the purpose of paying the existing debt of the company and of completing and equipping their road. The payment of the principal and interest hereof is secured by a mortgage of the railroad and franchises, furniture, and equipment of this company, bearing date March 19, A. D. 1866, which has been made in trust to Robert H. Berdell, Dudley S. Gregory, and John C. Bancroft Davis, which is to be the first and only lien on the property and franchises of the company when the existing mortgage-debt is retired, to meet which a corresponding portion of this issue of bonds is placed in trust in the hands of said trustees. Upon the failure to pay any one of the interest-warrants hereto attached, upon due presentation, on or after maturity, and offer to surrender the same, provided said default continue for the space of six months thereafter, this whole series of bonds, upon the election of the holders and owners and of a majority thereof, signified in writing to the mortgagor and to the trustees, shall become due and payable.

This bond is convertible at the option of the holder, being then the owner thereof, into the common capital-stock of the company, and upon the surrender of the same with the proper coupons annexed, the
8 company agrees to issue a certificate or certificates of capital-stock therefor at par, as at any time authorized by law, when this bond will be cancelled.

In witness whereof this company has caused its corporate seal to be hereto affixed, and this bond to be signed by its president and secretary.

———, *President.*

———, *Secretary.*

That each of the said interest-warrants attached to said bonds was in the words and figure following, to wit:

$35. BOSTON, HARTFORD AND ERIE RAILROAD COMPANY $35.

will pay , the bearer, thirty-five dollars, in the city of New York, on the first day of , 18 , for semi-annual interest on bond No. .

H. N. OTIS, *Sec'y.*

That thereupon, afterwards, the Boston, Hartford and Erie Railroad Company did issue all of said twenty thousand bonds except one, and the same are now owned by bona-fide holders for value; that, in order to secure the payment of the said bonds and interest-warrants thereon the same Boston, Hartford and Erie Railroad Company executed and delivered its certain mortgage or deed of trust to Robert H. Berdell, of Goshen, in the State of New York, Dudley S. Gregory, of Jersey City, in the State of New Jersey, and John C. Bancroft Davis, of New Hamburg, New York, as trustees; wherein and whereby it granted, bargained, sold, aliened, released, and confirmed unto the said trustees and survivor of them, and to their successors and assigns, all and singular the railways of said Boston, Hartford and Erie Railroad Company, commencing at the foot of Summer street, in Boston, in the State of Massachusetts, and running to Willimantic, in the State of Connecticut, through Thompson, in the said Connecticut, and commencing at Providence, in the State Rhode Island, and running to said Willimantic, and also commencing on the northerly side of said city of Boston, and running through Woonsocket, in said Rhode Island, to said Willimantic, and thence through the State of Connecticut and a portion of the State of New York to the western terminus of the location of the railway of said company, on the east bank of the Hudson River at Fishkill; also running from said Willimantic to the city of New Haven,
9 in Connecticut, also from a point in said railway in said Thompson to Southbridge, in the State of Massachusetts, as said railways were then or should be located, constructed, or improved, under or by virtue of any powers then granted, or that might thereafter be granted or obtained, to locate, construct, or use a railroad on any of said indicated lines, with all the lands that were included or might be included in the location of said railway, or acquired for the use of said company within the terminal points aforesaid, but not including the lands at the termini at Boston and Fishkill, which were outside of the location of said railroad, together with all their lands, tracks, lines, rails, bridges, ways, depots, stations, water-tanks, shops, buildings, piers and wharves, erections, fences, walls, fixtures, privileges, franchises, rights, leases and charters; also all the like estate, roads, railroads and structures, and matters and things pertaining or belonging thereto, that might be thereafter acquired or constructed, or belong to or be controlled by it, the said Boston, Hartford and Erie Railroad Company, together with the tolls, income, issues, and profits to be had from the same, and all rights to receive and recover the same, and everything necessary for the complete use of its road; also all the locomotives, engines, tenders, cars, carriages, tools, shops, fixtures, and machinery, and all the coal, wood, and other fuel belonging or appertaining to said railroad, or that might at any time thereafter belong or appertain to the same, as it might be changed by use and new acquisitions; also all the estate, real, personal, and mixed, of any of the foregoing descriptions, or of any

other kind that might be thereafter acquired by said Boston, Hartford and Erie Railroad Company, and used or intended to be used in the construction and operation of said railroad.

That a copy of said mortgage is hereto annexed, marked Exhibit A. That a portion of the property covered by said mortgage is within this State, and a portion thereof, including valuable real estate, is situated in said county of Suffolk.

And your orators further allege, that the said corporation has made default in the payment of the interest-warrants upon a large amount of said bonds, secured by the mortgage aforesaid, falling due the 1st day of January, 1870; also of the interest-warrants falling due on the 1st day of July, 1870; and that said interest-warrants being in default on the 1st day of January, 1870, and on the 1st day of July, 1870, are still in default and unpaid. That the whole of the property of said corporation, real, personal, and mixed, corporeal and incorporeal, in this State and in all other States, is grossly inadequate security for the bonds issued by the said corporation, and professedly secured by the mortgage aforesaid; and the earnings of the said corporation, from every source whatever, are insufficient to pay the interest secured to be paid under the said mortgage as the same falls due. That the property of the said corporation has been, as your orators are informed and believe, greatly mismanaged, and has greatly depreciated in value since the execution of the said mortgage as aforesaid, under which the bonds and coupons are secured.

And your orators have reason to believe and do believe that there is imminent danger that the whole security for the said mortgage and for the bonds protected by the same will be speedily wasted and utterly destroyed unless protected by the intervention of the court. That, as your orators are informed and believe, an act was passed by the legislature of said Commonwealth of Massachusetts, on the twelfth day of April, A. D. 1866, in and by which it was enacted that the proceedings of the said Boston, Hartford and Erie Railroad Company, whereby, by indenture dated March nineteenth, eighteen hundred and sixty-six, they conveyed their railroad and property in mortgage to said Robert H. Berdell, Dudley S. Gregory, and John C. Bancroft Davis, trustees of the bondholders in said mortgage mentioned, to secure to the holders of said bonds the payment of the same, were ratified and confirmed.

And your orators further allege, that after the execution of the said mortgage or deed of trust mentioned above, the said Robert H. Berdell pretended to resign the trust which he had accepted therein, and John S. Eldridge of said Boston, the then and present president and a director of the said Boston, Hartford and Erie Railroad, claimed to act in his place; that subsequently the said J. C. Bancroft Davis and Dudley S. Gregory pretended likewise to resign the said trusteeship under said mortgage, and thereupon Mark Healey, of Lynn, in the county of Essex, and Henry N. Farwell, of said Boston, claimed to be trustees in their place; and that the said Healey and Farwell were at that time, and as your orators believe now are, directors of said defendant company, the Boston, Hartford and Erie Railroad Company; that subsequently the said Mark Healey and the said Farwell pretended to give place to Thomas Talbot, of Billerica, in the State of Massachusetts, and Moses Kimball, of said Boston, but whether the said Eldridge has given place, or pretended to do so, to any other person, as such trustee, your orators have no knowledge; that said Berdell, Davis, and Gregory claim and pretend that they are no longer trustees under said mortgage, and decline to act as such.

And your orators claim and insist that the said original trustees, Robert H. Berdell, John C. Bancroft Davis, and Dudley S. Gregory, could not finally determine their trust under said mortgage or deed of trust, without the assent of the bondholders for whom they were trustees, and without the action of some court of competent jurisdiction in the premises; and that they are and shall be held to be the present continuing trustees under said mortgage, and amenable to all its responsibilities, and liable to all the duties therein mentioned, and bound to fulfil all the obligations therein and thereby originally assumed by them.

And your orators further charge and insist that, under and by virtue of the terms of the said bond above mentioned, and of the mortgage given to secure the same, there were to be retained in the hands of said Berdell, Davis, and Gregory, trustees as aforesaid, such amount of said bonds as should be equal to the whole amount of the bonds and mortgage-notes outstanding from time to time, which then were a lien upon any of the property or franchises by said mortgage to said Berdell, Davis, and Gregory conveyed, and that the same were to be delivered to said corporation only on the cancellation of a corresponding amount of said outstanding bonds and mortgage-notes, as by reference to said bonds and mortgage will more fully and at large appear; that these were so placed in the hands of said trustees to be used for taking up the unretired debt—upwards of two millions dollars par value of said bonds.

And your orators charge and insist that the said Berdell, Davis, and Gregory have not used the said bonds, so placed in their hands in trust, to retire the then existing mortgage-debt, as by the terms of said bonds required, but, as your orators believe, fraudulently and wrongfully permitted and allowed the said bonds to be used by the officers of said
12 Boston, Hartford and Erie Railroad Company for other purposes, so that there is now outstanding upwards of said two millions dollars of debt on the property and franchises intended to be covered by said mortgage to Berdell, Davis, and Gregory, and which last-mentioned mortgage was intended as a first and only lien; and all of the said bonds, amounting to twenty millions of dollars, have passed into the hands of bona fide holders, except one; and your orators are informed and believe that only a small portion of the proceeds of said bonds have been used in completing or equipping said road, and the balance of the proceeds thereof have been used wrongfully by said Boston, Hartford and Erie Railroad Company for other purposes not contemplated by the purchasers of said bonds, and in violation of the terms thereof.

And your orators charge and insist, on information and belief, that said trustees or pretended trustees, or some of them, have connived at or been accessory in some way to the fraudulent disposition of said reserved bonds, and that two or more of them are connected with, as officers or directors of, a competing and antagonistic railroad company, the interest of which would be to impair the property and franchise held under the mortgage given to secure the bonds and interest-warrants as aforesaid. And your orators charge and insist that all of said persons are improper and unfit to have any charge or control of the mortgaged property as aforesaid, or to represent your orators and those like situated with them in the premises, and should be restrained from interfering or attempting to interfere therewith.

And your orators further show unto your honors, that there are numerous suits against said Boston, Hartford and Erie Railroad Company,

recently brought, now pending in the courts of this State, in some of which attachments of their franchise, real estate, and property have been made, and in others of which attachments of their real estate have been made, to wit, a suit of Edward Haynes, in which the ad damnum is twelve thousand dollars; a suit of Sidney Dillon, in which the ad damnum is one million two hundred thousand dollars; a suit of Clark & Jones, in which the ad damnum is ten thousand dollars, all pending in the supreme judicial court in and for the county of Suffolk; a suit of Broad & Ward, in which the ad damnum is thirty thousand dollars, returnable to the October term, A. D. 1870, of the supreme judi-
13 cial court in and for said county of Suffolk; four suits, in which the Merchants' National Bank of Lowell are plaintiffs, all returnable to the supreme judicial court in and for the county of Middlesex, at the next October term thereof, in two of which the ad damnum is ten thousand dollars each, and in the other two of which the ad damnum is twenty thousand dollars each; another suit of said Dillon, in which the ad damnum is one million two hundred thousand dollars, returnable to said supreme judicial court in and for said county of Suffolk, at the next October term thereof; a suit in which Charles E. Powers is plaintiff, returnable to the October term now next ensuing of the superior court in and for said county of Suffolk, the ad damnum in which is five thousand dollars.

And your orators further show unto your honors, that one Henry Emerson has obtained judgment and execution in this State, to wit, in the month of March now last past, against said Boston, Hartford and Erie Railroad Company, and thereupon made a levy upon the property of said corporation, which levy was suspended by reason of prior attachments on the same property.

And your orators further show unto your honors, that your orators are informed and believe, that the legislature of the State of Connecticut, at the May session thereof, A. D. eighteen hundred and seventy, passed a resolution or resolve, a copy whereof is hereto annexed, marked B, which your orators are informed and believe was approved by the governor of said State of Connecticut on the eighth day of July, A. D. 1870, purporting to authorize said Boston, Hartford and Erie Railroad Company to issue its mortgage bonds to an amount not exceeding fifteen millions of dollars, each bond to be for one thousand dollars, and to be due January first, nineteen hundred, with interest at seven per cent. per annum, and with coupons attached, payable semi-annually, on the first days of July and January in each year, and which resolution also purports to authorize the said corporation, the Boston, Hartford and Erie Railroad Company, to secure the payment of said bonds by mortgage to three persons, trustees of all the franchises and property of said corporation, real, personal, or mixed, owned by it at the date of the mortgage so authorized, or which said corporation might
14 thereafter acquire, however said property might be described or wherever situate or being.

And your orators further show unto your honors, that said resolution does not provide, define, or indicate for what purpose the proceeds of the bonds thereby authorized shall be used, nor does it provide (as your orators believe) that any portion of said proceeds shall be used in the construction or completion or equipment of the road of said corporation.

And your orators further show unto your honors, that by the terms of the bonds so secured by said mortgage to said Berdell, Gregory, and Davis, it is provided, stipulated, and by said corporation agreed, with the holders thereof, that said last-mentioned mortgage shall cover and

embrace other property, rights, and franchises of said corporation thereafter acquired, and that said last-mentioned mortgage shall be the first and only lien on the property and franchises of said corporation when the mortgage-debt previously existing thereon should be retired.

And your orators further show, that said previously existing mortgage debt has never been paid, satisfied, or retired. And your orators further show, that said corporation, in direct and wanton violation of the terms of said bonds, and the agreements of said corporation therein contained, have called a meeting (a copy of the published newspaper notice of which is hereto annexed, marked C) to be held in said Boston, on the twenty-first day of July now current, at which meeting of said corporation the directors of said corporation threatened to have passed, and at which meeting your orators believe will be passed by the stockholders of said corporation, unless restrained and interdicted by the injunction of this honorable court, a vote authorizing the making, execution, and issuing, under and by color of said resolution of the State of Connecticut, the bonds of said corporation to the amount of fifteen millions of dollars, and a mortgage on all the franchises, rights, and property of said corporation, as well within as without the territorial limits of this State, to secure the payment thereof. And your orators are informed and believe, and therefore represent, that said directors, and the stockholders of said corporation, with the view and for the purpose of unlawfully embarrassing the rights of the bondholders under said mortgage so made to said Berdell, Davis, and Gregory, intend at said meeting also to pass a vote giving to the trustees, whoever they may be, to be named in said intended mortgage for fifteen millions, the entire, full, and absolute possession of the road, rolling-stock, depots, buildings, real estate, and property of said corporation, all which, and the making of said intended mortgages, your orators charge are in direct and palpable violation of the terms and agreements contained in said bonds so secured by said mortgage to said Berdell, Gregory, and Davis, and of the rights of the bondholders thereunder.

And your orators further show unto your honors, that by said last-mentioned mortgage the after-acquired rights, franchises, and property of said corporation, which are large and valuable, from time to time, as acquired by said corporation, became subject to and covered by and held under said last-mentioned mortgage, and the said mortgage in equity, if not at law, attached thereto; and if said after-acquired rights, franchises, and property did not at law become subject to said mortgage, said corporation is bound, by apt and proper conveyances, to mortgage the same to secure the payment of said bonds so secured by said mortgage so made to said Berdell, Gregory, and Davis, in the manner in that mortgage set forth, and that in equity the holders of said bonds have a right to have a decree against said corporation to compel it to execute a confirmatory or other proper mortgage accordingly, and that said corporation, in violation of their obligation and duty in that respect, propose and intend to mortgage said after-acquired as well as its other franchises, rights, and property to secure the payment of said proposed bonds to the amount of fifteen millions of dollars; and your orators are advised and believe that, by the making of said proposed or intended mortgage, the rights of the holders of the bonds secured by said mortgage to said Berdell, Gregory, and Davis, in and to the after-acquired franchises, rights, and property aforesaid, as security for the payment of said bonds, will be greatly imperilled.

And your orators are informed and believe that said corporation has no authority under the laws of this State to issue said proposed bonds

or make said proposed mortgage. And your orators further show unto your honors, that the affairs of said corporation are and have been for a long time past grossly mismanaged by the active directors thereof; that a large part of the moneys of the said corporation has been diverted from the legitimate purposes of said corporation, and misappro-
16 priated or wasted by them; that each attempt on their part to extricate and relieve said corporation from its difficulties has been unsuccessful, and productive of only greater difficulties and pecuniary embarassments; and that your orators believe that without the equitable intervention of this honorable court the mortgaged property will be greatly depreciated in value, if not wholly lost.

And your orators further show unto your honors, that a valuable part of the property of the said corporation, and which is, as after-acquired rights and property of said corporation, embraced in and covered by or intended to be embraced in and covered by said mortgage to said Berdell, Gregory, and Davis, is a lease, dated February 9, 1869, made by the Norwich and Worcester Railroad Company to said Boston, Hartford and Erie Railroad Company, and ratified and confirmed by the legislature of this Commonwealth, of all and singular the railway of said Norwich and Worcester Railroad Company, extending from a point in the city of Worcester, in Massachusetts, to Allyn's Point, so called, some miles southerly of the city of Norwich, in Connecticut, with its railway in said city of Norwich, together with its rights, easements, franchises, privileges, lands, tracts, depots, stations, and other property therein and thereby demised, for the term of one hundred years from and after the first day of February, A. D. eighteen hundred and sixty-nine, at the annual rent of two hundred and thirty-five thousand four hundred and thirty dollars, payable semi-annually on the first days of July and January in each year, in equal half-yearly payments of one hundred and seventeen thousand seven hundred and fifty dollars, a copy of which lease is hereto annexed, and marked D.

And your orators further show unto your honors, that it is stipulated and provided in and by said lease that if the rent therein reserved, or any part thereof, shall remain unpaid for thirty days from and after any day of payment, and written demand to pay the same has been made, then that it should be lawful for the lessors, the said Norwich and Worcester Railroad Company, into and upon the demised premises and every part thereof wholly to re-enter and remove all persons therefrom, without process of law, and the same to have again, repossess, and enjoy, as of their first and former estate, and that said lease, at the option
17 of said lessors, shall be thenceforth forfeited, cease, and determine, as therein set forth, all which will more fully and at large appear by reference to said copy thereof, so annexed as aforesaid to this bill of complaint. And your orators further show unto your honors, that said lease is of great importance and value to said Boston, Hartford and Erie Railroad Company, as a part of a continuous land and water through route from the city of Boston to the city of New York, and that within the terminal points of the railway so demised there is a large and constantly increasing freight and passenger business. That the semi-annual rent, which became due and payable under said lease on the first day of July current, has not been paid and is in arrear, and payment thereof has been demanded by said lessors of said lessees, and the thirty days from the time of said demand will soon expire; and your orators are informed and believe that said lessees have not the means and cannot raise the means to pay the said matured and overdue rent; and that if a receiver is appointed by this honorable court, pursuant to the prayer

of this bill, the holders of the bonds secured by said mortgage, so made to said Berdell, Gregory, and Davis, will place in his, said receiver's, hands sufficient funds to pay said overdue rent, and thus preserve said lease.

And your orators further show unto your honors, that the public have justly lost confidence in the officers of said Boston, Hartford and Erie Railroad Company, and in their management and administration of the property, business, and affairs of said road; and that the bonds now held secured by said mortgage to said Berdell, Gregory, and Davis, have declined and depreciated so much in the market that the same cannot now be sold for more than twenty-seven per cent. on the face thereof, and the price thereof is, as your orator believes, steadily declining.

And your orators further show unto your honors, that your orators can have adequate relief in the premises only in a court of equity, where matters of this nature are properly cognizable and relievable. To the end, therefore, that said after-acquired franchises, rights, and property may be decreed to be embraced in and pass and covered by said mortgage, so made to said Berdell, Davis, and Gregory, or, if not so decreed, that said Boston, Hartford and Erie Railroad Company may be decreed, by apt conveyances, to mortgage the same to secure the payment of said bonds, and that an account may be taken and stated
18 of the amount due to the several holders of the said bonds and interest-warrants, as well for principal as for interest, that has accrued and remained unpaid, and also an account of the property covered or embraced or intended to be covered or embraced by said mortgage, and that said mortgage may be foreclosed, and that the railroad, rolling-stock, franchises, rights, and property covered or embraced in or by or intended to be covered or embraced in or by said mortgage may be sold under the decree of this honorable court, subject to any prior incumbrance existing thereon, or otherwise, as this court shall direct; and that from the proceeds of such sale the holders of the bonds so secured by said mortgage to said Berdell, Gregory, and Davis may be paid the amount of said bonds, or the interest due thereon, and that they may have, as to the principal thereof, such protection in or upon or in respect to said proceeds as shall be proper; that in the mean time, and until the final adjudication of this cause, some proper person may be appointed by this honorable court, receiver of all the railroad, rolling-stock, franchises, rights, and property covered by or embraced in or intended to be covered by or embraced in said mortgage so made to said Berdell, Gregory, and Davis, and of all the rents, income, profits, and issues thereof or therefrom, and apply the same under the order of this honorable court, with full power to run and operate said road, and with all the other usual and incidental powers ordinarily vested in or granted to receivers in like cases; and that said Boston, Hartford and Erie Railroad Company, its president, directors, officers, and agents, and said Berdell, Davis, and Gregory, Eldridge, Healey, Farwell, Talbot, and Kimball, and each and every of them, and all persons claiming or pretending to act as trustees under said mortgage, may be restrained and enjoined by the injunction of this honorable court from interfering with any or any part of the railroad, rolling-stock, franchises, rights, or property covered by or embraced in, or intended to be covered by or embraced in said mortgage so made to said Berdell, Gregory, and Davis; and that said Boston, Hartford and Erie Railroad Company, its president, directors, officers, and agents, and each and every of them, may also be restrained by the injunction

of this honorable court from making or issuing any bonds or any mortgage under said resolution of the legislature of the State of Connecticut, or under any other authority, real or pretended, or otherwise
19 making or creating any encumbrance on any of the railroad, rolling-stock, franchises, rights, or property covered by or embraced in or intended to be covered by or embraced in said mortgage so made to said Berdell, Gregory, and Davis; and the said Boston, Hartford and Erie Railroad Company, and said Berdell, Gregory, Davis, Eldridge, Healey, Farwell, Talbot, and Kimball, (and all other persons, if any, claiming or pretending to act as trustees under said mortgage, and who (if any) your orators pray may be made defendant hereto, when ascertained,) may answer all and singular the premises, but not under oath, the benefit of which is hereby waived, and that your orators may have such further and other relief in the premises as the nature and circumstances of this case shall require and to your honors shall seem meet, may it please your honors to grant unto your orators not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna, to be directed to the said Boston, Hartford and Erie Railroad Company and said Berdell, Gregory, Davis, Eldridge, Healey, Farwell, Talbot, and Kimball, commanding them at a certain time, and under a certain pain therein to be limited, personally to be and appear before your honors in this honorable court, then and there full, true, direct, and perfect answer make to all and singular the premises, but not under oath, and to stand, to abide and perform such order, direction, and decree therein as to your honors shall seem meet.

GEORGE ELLIS.
MATTHEW BOLLES.
MICHAEL S. BOLLES.

BROOKS & BALL,
Of Counsel with Complainants.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

BOSTON, *July* 20, A. D. 1870.

Then the said George Ellis, Matthew Bolles, and Michael S. Bowles, complainants in the foregoing bill of complaint, personally appeared and made solemn oath that the statements contained in said bill of complaint, so far as made upon their personal knowledge, are true, and so far as made upon information or belief are verily believed by them to be true.

Before me,

JOSHUA D. BALL,
Justice of the Peace.

20 A.

This indenture of mortgage, made this nineteenth day of March, in the year one thousand eight hundred and sixty-six, by and between the Boston, Hartford and Erie Railroad Company, a corporation existing under the laws of the States of New York, Connecticut, Rhode Island, and Massachusetts, party of the first part, and Robert H. Berdell, Dudley S. Gregory, and John C. Bancroft Davis, trustees, parties of the second part, witnesseth:

Whereas the shareholders of the Boston, Hartford and Erie Railroad Company, at a meeting duly and lawfully called and held at the city of New York, on the fourteenth day of March, A. D. 1866, voted to authorize

the directors to make application to the several legislatures of the States in which the chartered rights of this road exist, for authority to make a mortgage upon the whole or any portion of the line of the road, and to create, issue, and dispose of, at the best rates that can be obtained, their convertible mortgage-bonds, payable in the city of New York on the 1st day of July, A. D. 1900, for one thousand dollars each, not to exceed the amount of twenty millions of dollars in all, (such portion of the principal and interest thereof, however, as the directors of the company may authorize, to be made payable in London, in the kingdom of Great Britain, in sterling currency, at the rate of four shillings sterling to the dollar,) interest payable semi-annually on the first days of January and July in each year, at the rate of seven per cent. per annum, interest and principal to be payable at such places in the city of New York or in Lonon as the directors may authorize; and the particular form of bonds, interest-warrants thereon, and mortgage to be left entirely at the discretion of the board of directors, the said bonds to be issued for the purpose of providing for and retiring all the existing mortgage-debt and prior liens upon the line of the road of the party of the first part, and for the purpose of completing and equipping their road and of laying down a third rail so as to form an additional track, corresponding with the gauge of the Erie Railway of New York.

And whereas the said board of directors, at a meeting duly
21 convened and held in the city of New York, on the nineteenth day of March, 1866, voted to authorize the creation and issue of the first-mortgage bonds of said company in the following form, when of Federal currency, to wit:

No.—— $1,000

BOSTON, HARTFORD AND ERIE RAILROAD COMPANY.

Know all men by these presents, that the Boston, Hartford and Erie Railroad Company acknowledges itself indebted to Dudley S. Gregory or bearer in the sum of one thousand dollars, lawful money of the United States, which sum it promises to pay at its office or agency in the city of New York, on the first day of January, in the year one thousand nine hundred, with interest at the rate of seven per centum per annum, payable semi-annually on the first days of January and July in each year, on the presentation and delivery of the proper annexed interest-warrants.

This bond is one of a series of twenty thousand bonds of even date herewith, issued for the purpose of paying the existing debt of the company, and of completing and equipping their road. The payment of the principal and interest hereof is secured by a mortgage of the railroad and franchises, furniture, and equipment of this company, bearing date March 19, A. D. 1866, which has been made in trust to Robert H. Berdell, Dudley S. Gregory, and John C. Bancroft Davis, which is to be the first and only lien on the property and franchises of the company, when the existing mortgage debt is retired, to meet which a corresponding portion of this issue of bonds is placed in trust in the hands of said trustees.

Upon the failure to pay any one of the interest-warrants hereto attached, upon due presentation, on or after maturity and offer to surrender the same, provided said default continue for the space of six months thereafter, this whole series of bonds, upon the election of the holders and owners of a majority thereof, signified in writing to the mortgagor and to the trustees, shall become due and payable.

This bond is convertible at the option of the holder, being then the owner thereof, into the common capital stock of this company, and upon the surrender of the same, with the proper coupons annexed, the company agrees to issue a certificate or certificates of capital stock therefor at par, as at any time authorized by law, when this bond will be cancelled.

22 In witness whereof this company has caused its corporate seal to be hereto affixed, and this bond to be signed by its president [SEAL.] and its secretary, the day of , eighteen hundred and sixty-six.

——— ———, *President.*

——— ———, *Secretary.*

We certify that this bond is one of the twenty thousand bonds of one thousand dollars each, (or two hundred pounds each when in sterling currency,) secured by the mortgage referred to above, and that said mortgage has been delivered to us and recorded as authorized by law.

} *Trustees.*

And such of the said bonds as shall be made payable in sterling currency shall be for the principal sum of two hundred pounds sterling in lieu of one thousand dollars, and the principal and interest thereof shall be made payable at such place in London as the directors of the company shall authorize, in lieu of the office or agency of the company in the city of New York.

And whereas the said directors, at their said meeting, further voted to empower bonds of said form, either in Federal currency or sterling currency, or either, hereafter to be issued, and to be secured under the mortgage, and the said corporation thereby to become indebted to the divers persons or bodies politic or corporate who may become the holders thereof, but not in a greater principal sum than twenty millions of dollars in all, or a proportionate part thereof in sterling currency, at the rate of four shillings sterling to the dollar; and further, at the same time voted to secure the entire issue of said bonds by the execution of a mortgage in the form of these presents:

Now, therefore, this indenture witnesseth, that the parties of the first part, for the better securing and more sure payment of the sums of money mentioned in the said mortgage bonds, and each of them, according to the tenor thereof, and in consideration of one dollar to them paid by the parties of the second part, at or before the ensealing hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, aliened, released, and confirmed, and by these presents do grant, bargain, sell, convey, alien, release, and confirm, unto the said parties of the second part, and the survivor of them, and to his and their successors and assigns, all and singular the railways

23 of said Boston, Hartford and Erie Railroad Company, commencing at the foot of Summer street, in Boston, in the State of Massachusetts, and running to Willimantic, in the State of Connecticut, through Thompson, in said Connecticut, and commencing at Providence, in the State of Rhode Island, and running to said Willimantic, and also commencing on the northerly side of said city of Boston, and running through Woonsocket, in said Rhode Island, to said Willimantic, and thence through the State of Connecticut and a portion of the State of New York, to the western terminus of the location of the railway of

said company on the east bank of the Hudson River at Fishkill; also running from said Willimantic to the city of New Haven, in Connecticut; also from a point in said railway, in said Thompson, to Southbridge, in the State of Massachusetts, as said railways are now or shall be located, constructed, or improved, under or by virtue of any powers now granted, or that may hereafter be granted or obtained, to locate, construct, or use a railroad on any of said indicated lines, with all the lands that are included or may be included in the location of said railway, or acquired for the uses of said company within the terminal points aforesaid, but not including the lands at the termini at Boston and at Fishkill, which are outside of the location of said railroad, together with all their lands, tracks, lines, rails, bridges, ways, depots, stations, water-tanks, shops, buildings, piers and wharves, erections, fences, walls, fixtures, privileges, franchises, rights, leases, and charters; also all the like estate, roads, railroads and structures, and matters and things pertaining or belonging thereto that may be hereafter acquired or constructed or belong to or be controlled by the party of the first part.

Together with all the tolls, income, issues, and profits to be had from the same, and all rights to receive and recover the same, and everything necessary for the complete use of the road; also all the locomotives, engines, tenders, cars, carriages, tools, shops, fixtures and machinery, and all the coal, wood and other fuel belonging or appertaining to said railroad, or that may at any time hereafter belong or appertain to the same, as it may be changed by use and new acquisitions; also all the estate, real, personal, and mixed, of any of the foregoing descrip-
24 tions, or of any other kind which may be hereafter acquired by the party of the first part, and used or intended to be used in the construction and operation of the said railroad.

To have and to hold the same, together with all and singular the emoluments, income and advantages, tenements, hereditaments, and appurtenances thereunto belonging, unto the said parties of the second part and the survivor of them, and his and their successors and assigns forever, on the trusts and for the uses and purposes herein declared, and none other.

Provided always, and these presents are upon the express condition, that if the said parties of the first part shall well and truly pay or cause to be paid to the holders of the said mortgage bonds or obligations, intended to be secured hereby, and every one of them, the principal sums of money therein mentioned, according to the true intent and meaning thereof, with interest thereon, at the times and in the manner therein provided, according to the true intent and meaning of these presents, that then and from thenceforth this indenture, and the estate hereby granted, shall cease, determine and be utterly void.

And this indenture further witnesseth, that these presents, and the said mortgage bonds or obligations hereby intended to be secured, are made, executed, and delivered upon the terms, conditions, and agreements following, that is to say:

First. That the actual possession, use, management, and control of all the granted premises shall remain with the parties of the first part so long as the said mortgage bonds shall remain without default or forfeiture, who may, from time to time, with the consent of the trustees, in writing, sell or exchange any of the mortgaged estate, and purchase with the proceeds other property, to be included under this indenture.

Second. That in the case of the death, resignation, or removal of one of said trustees, the premises hereby conveyed, and the trusts hereby created, shall vest in the survivors or survivor, who shall thereupon

appoint in writing, by deed, a person or persons in the place and stead of the trustee or trustees so deceased, resigned, or removed, and such appointment and the acceptance thereof shall vest the said premises and trusts in the person so appointed, jointly with the trustees so appointing, as fully as if such appointment had been originally made in this deed; and all subsequent vacancies happening in said trust
25 shall be filled in like manner and with like effect by the trustee in each case remaining. And in case of the decease, removal or resignation of all of said trustees, the vacancies may be filled by any judge of the supreme court of the State of Connecticut, on application of any party interested, on such notice to the other parties interested as the judge acting shall order; and the trustees so appointed and accepting shall become vested with all the franchises and estate hereby conveyed, on recording or lodging a certified copy of the order for their appointment in all places where this mortgage is required by law to be recorded or lodged.

And this indenture further witnesseth, that the said parties of the first part, for themselves and their successors, do covenant and agree to and with the said parties of the second part, the survivor of them, and his and their successors and assigns—

1st. That they will, at their own proper charge, do all things necessary to be done to keep intact the lien hereby created.

2d. That they will, at any time or times hereafter, upon the request of said parties of the second part, their successors or assigns, make, do and execute, and cause to be made, done, and executed, all and every such further and reasonable acts, conveyances, assignments, and assurances in the law, for the better and more effectual vesting and confirming the premises hereby granted, or intended so to be, in and to the said parties of the second part, their successors and assigns forever, as by the said partes of the second part, their successors or assigns, or their counsel learned in the law, shall be reasonably devised, advised, or required.

3d. That of the whole issue hereby authorized to be made of said bonds there shall be retained in the hands of said parties of the second part such amount of said bonds as shall be equal to the whole amount of the bonds and mortgage notes outstanding from time to time, which are a lien upon any of the property or franchises hereby conveyed, which are to be delivered to the parties of the first part only on the cancellation of a corresponding amount of said outstanding bonds or mortgage notes.

4th. That the party of the first part will, at the close of the year 1869, and at the close of each year thereafter, during the continuance of this trust, pay to the parties of the second part, their successors and assigns, a sum equal to ten per cent. upon the net earnings for the current
26 year remaining after the payment of the current interest for that year on the then outstanding bonds issued under this mortgage; which sum the said trustees shall invest, as received, in said mortgage-bonds, if the same can be purchased at not exceeding one hundred and twenty-five per cent.; and if they cannot invest the same in said mortgage-bonds at that limit, they shall invest them in gold-bearing securities of the United States; and they shall invest all sums received from interest and dividends on the trust-fund in like manner, and shall hold the trust-fund as a security for the payment of the said mortgage bonds at maturity, and shall annually, on the first day of January in each year, report the condition of the said trust-fund to the secretaries

of state of the States of Massachusetts, Rhode Island, Connecticut, and New York.

5th. That the parties of the first part will pay unto the holders of the said mortgage-bonds respectively the said principal sums of money respectively mentioned as above, and as expressed in said bonds, and will pay the interest thereon as the same shall become due and payable.

6th. That the expenditure of all sums of money realized by or from the sale of the bonds issued under this mortgage shall be made with the approval of at least one of the said trustees, whose assent in writing shall be necessary to all contracts made by the party of the first part before the same shall be a charge upon any of the sums received from said sales.

7th. That in case default be made by said company in payment of any moneys, either principal or interest, secured hereby, (the default continuing for six months,) the said company shall, on demand of the trustees or trustee for the time being, or his or their agent authorized thereto in writing, deliver to said trustees or trustee, or his or their agent, the actual possession of all the herein granted premises, and thereupon the said parties of the second part shall and may, by themselves, their officers, agents, and employees, take, receive, and operate the said railroad, franchises, and other property and estate hereby conveyed, and collect, receive, and have the rents, income, and profits thereof, as fully as the party of the first part could do if no default had been made; and while so in possession, the said party of the second part shall apply such part of said rents, income, and profits as shall, in their judgment, be
27 necessary, to the payment of the running and operating expenses of the road, including the necessary repairs of road, road-bed, buildings, machinery, and equipment, and all expense of agents, clerks, officers, employees, and laborers, and all claims for damages allowed, and all payments for insurance and taxes, and all items usually distributed to transportation expenses in railroad accounts, and to such increase and improvement of said roads, buildings, machinery, and equipment as the business shall, in their judgment, require, and to the payment of any and all claims necessary to secure and assure to them the estate and franchises hereby conveyed, and to their own compensation, and to the employment of competent legal advisers in their discretion, and to any and all other charges that are or should be allowed by a court of equity in the case of a receiver, as settled and established in the case of the receivership of the New York and Erie Railroad. And the parties of the second part are further authorized and empowered, after having taken possession as aforesaid, to contract with any other corporation, to lease or to operate the said railroad and franchises for any period, not exceeding the term that the trustees are herein authorized to retain possession thereof.

8th. Said parties of the second part, having taken possession as aforesaid, shall be further authorized, and may be required, whenever there shall be in their possession a sufficient sum for such purpose, (not required for any of the purposes aforesaid,) to pay in full any one class (beginning with the earliest) of matured and overdue interest-warrants on said bonds to the person or persons holding and presenting them for payment: and the said parties of the second part shall, while in possession of said roads and operating the same, or causing the same to be operated on a lease thereof, keep full and accurate accounts of all sums received or paid out by them, which shall be, at all reasonable times, open to the inspection of the party of the first part, and they

shall, at least once a year, publish abstracts thereof for the use of the bondholders; and whenever the said parties of the second part are in doubt as to any of their powers or duties in the premises, they may apply to the supreme court of the State of Connecticut, or any judge thereof in chambers, for directions, and the directions or order of said court
28 or of such judge thereof, on their application, when complied with, shall be their full protection for so doing.

9th. On taking possession as aforesaid, the said trustees shall file in the office of the secretaries of state of the States of Massachusetts, Rhode Island, Connecticut, and New York, a written notice, acknowledged before a notary public, that they have taken possession of said mortgaged property, franchises, and estate for default in the payment of principal or interest, or both, as the same may be, and of their purpose to foreclose the said mortgage for said default. And if the said default shall continue for the space of eighteen months after such notice shall be filed, the whole of the mortgaged premises and franchises shall vest absolutely and in fee in the parties of the second part, without further assurance and without further process of law, and all right or equity of redemption of the party of the first part therein shall be forever barred and foreclosed; but if the whole of the principal and interest in arrear, with interest thereon, when the same may by law be demanded, and the lawful claims, disbursements, and liabilities of the said trustees, made or incurred as aforesaid, on account of their trust, shall be paid and satisfied within the said period of eighteen months after the said notices shall have been filed, either by the said party of the first part (which right they are to have) or out of the net earnings of the property in the trustees' possession, then the said parties of the second part shall surrender unto the said parties of the first part the said mortgaged property, franchises, and estate, and all additions made by them thereto, and the said parties of the first part shall thereupon and thereby become revested with the same, as of their former estate, without further assurance.

10th. In case of an absol ute foreclosure under the provisions of this in strument, it shall be the duty of the trustees to call a meeting of the hold ers of the mortgage-bonds sec ured by this instrument, by an adver tisement of the time and place and object thereof, at least three times a week, for three successive weeks, in newspapers published, one in the city of Boston, one in the city of Providence, one in the city of Hartford, one in the city of New York, and one in London, in England; and the bondholders at such meeting may, at an election to be presided over by such of the parties of the second part, or their
29 successors, as shall be present, and in which each bondholder may cast one vote for every one thousand dollars principal sum of such bonded debt held by him, choose from their number a board of directors of like number with the then board, and may organize themf selves into a corporation, with a corporate name to be selected by them and a capital stock equal to such outstanding mortgage-debt, divided into shares of one hundred dollars each, which said corporation shall be invested with all the powers, privileges, and franchises, and shall be subject to all the duties, liabilities, and restrictions of the Boston, Hartford and Erie Railroad Company, and shall consist of the holders of the mortgage-bonds secured hereby, at the rate of ten shares for every bond of one thousand dollars or of two hundred pounds sterling, as said bonds shall be surrendered to said new corporation to be exchanged for certificates of stock, at the rate aforesaid. And the said parties of the second part shall, by deed, convey unto the said new corporation all the said mortgaged property, premises, estate, and franchises, and all additions thereto

and all moneys remaining in their hands, when they shall be fully paid and indemnified for their services and liabilities as hereinbefore provided; copies of which said deed shall be recorded or lodged wherever this instrument is required by law to be recorded or lodged; and upon the organization of the bondholders into a corporation, they shall file in the offices of the several secretaries of state above named copies of their proceedings in the organization, under their corporate seals, attested by their president and secretary, which shall be prima-facie evidence in all suits for or against them that they are a corporation; and after that time no bondholder shall participate in the earnings of the mortgaged property until he surrenders his bonds to the new corporation as herein provided.

11th. The remedy herein given to said parties of the second part shall not be construed to deprive them or any other parties of their full rights and remedies in the several courts of law and equity in said States, as they exist now or may hereafter exist, and any court of competent jurisdiction may enforce any of the provisions of this instrument.

12th. Whenever, and as soon as any bonds authorized to be issued hereby shall be created, issued, negotiated, and sold, the holders of the 6 per
30 cent. bonds issued by the Boston and New York Central Railroad Company, secured by their mortgage, dated March 7th, 1854, and the holders of the 6 per cent. bonds and mortgage-notes issued by the New York and Boston Railroad Company, and secured by their mortgage dated December 30th, 1862, and each of them, shall have the right, within two years from the time when any of said bonds under this indenture shall be created, issued, negotiated, and sold, to exchange their said bonds or mortgage-notes for the bonds to be issued under this indenture, upon the following terms, to wit: Upon the surrender to the Boston, Hartford and Erie Railroad Company of the said bonds of the Boston and New York Central Railroad Company or of the said bonds or mortgage-notes of the New York and Boston Railroad Company, in sums not less than one thousand dollars, with all the unpaid coupons, the said Boston, Hartford and Erie Railroad Company shall give in exchange at seven per cent. Boston, Hartford and Erie Railroad bond for one thousand dollars, to be issued under this indenture, drawing interest from January 1st, 1867, and for all sums smaller than one thousand dollars certificates shall be issued, exchangeable into said Boston, Hartford and Erie Railroad Company bonds, whenever they are presented to the said Boston, Hartford and Erie Railroad Company, in sums of one thousand dollars. And the holders of the seven per cent. bonds issued by the Boston, Hartford and Erie Railroad Company, and secured by their mortgage, dated February 2d, 1864, and each of them, shall have the right, within the same time, to exchange their said bonds for the bonds to be issued under this indenture, upon the following terms, to wit: Upon the surrender to said Boston, Hartford and Erie Railroad Company of said bonds of the Boston, Hartford and Erie Railroad Company, with all the unpaid coupons, the said Boston, Hartford and Erie Railroad Company shall give in exchange seven per cent. Boston, Hartford and Erie Railroad bonds, to be issued under this indenture, for the amount so surrendered, with certificates, as aforesaid, for all sums smaller than one thousand dollars.

And this indenture further witnesseth, that the parties of the second part do hereby accept the aforesaid trusts, and agree to execute them upon the following terms and conditions, which are mutually agreed to by the parties, namely: That neither trustee shall be answerable for the acts, omissions, or defaults of the other to which he does not give
31 his assent; that each shall be answerable for gross negligence

and wilful defaults only; that the trustees, or either of them, may employ or advise with legal counsel, and that the expenses thereof, and all the personal expenses of the trustees, in discharge of the trust, and all other reasonable and proper charges and expenses of the trustees, including their compensation, shall be paid by the parties of the first part as they are incurred, or otherwise, out of the trust estate on which they are charged; that neither shall be bound to pay or discharge any prior incumbrances on said mortgaged property or estate, nor any part thereof, without being first furnished with the means necessary to make such payments by the person so requiring; that they shall not be required to act in the execution of these trusts except at their own option, unless requested in writing by the holders of at least bonds to the amount of fifty thousand dollars, nominal par value, and also furnished with such funds as their counsel shall advise them are necessary and proper to enable them to commence proceedings, and also with a responsible and sufficient agreement to pay the current accruing expenses, obligations, and liabilities which they may incur by reason of so acting, and also a reasonable compensation to them for so doing; that when called upon to act, they shall be invested with full power to submit all questions of law or fact arising in the execution thereof to arbitrators, and also to compromise and settle any or all such questions; that they may employ agents or attorneys in fact to act for them whenever required to act themselves; and that all the covenants and agreements herein contained or implied may be executed specifically by any court of competent jurisdiction.

In witness whereof the parties of the first part have caused these presents to be sealed with their corporate seal, and attested by their president and secretary, and the said trustees have signed and sealed these presents the day and year first above written.

THE BOSTON, HARTFORD AND ERIE RAILROAD COMPANY.
By GEO. M. BARTHOLOMEW, *Pres't.* [SEAL.]
HORATIO N. OTIS, *Secretary.*
ROBERT H. BERDELL, [SEAL.]
D. S. GREGORY, [SEAL.]
J. C. BANCROFT DAVIS, [SEAL.]
Trustees.

[U. S. rev. stamps.]

Signed, sealed, and delivered in the presence of—
WM. H. BALDWIN,
M. SMITH.

32 UNITED STATES OF AMERICA:
State of New York, City and County of New York, ss:

By this public instrument be it remembered that on this 25th day of April, A. D. one thousand eight hundred and sixty-six, before me, the subscriber, Joseph B. Nones, a commissioner in and for the State of New York, appointed by the governor of the State of Massachusetts to take proof and acknowledgement of deeds, mortgages, letters of attorney, or any other instrument to be used or recorded in the said State of Massachusetts, and to administer oaths and affirmations, take depositions, &c., &c., personally appeared George M. Bartholomew, president, and Horatio N. Otis, secretary, of the Boston, Hartford and Erie Railroad Company, and Robert H. Berdell, Dudley S. Gregory, and John C. Bancroft Davis, trustees of said railroad company, the persons described in and who executed the annexed instrument, and acknowledged to me that

they severally executed the same voluntarily and freely for the uses and purposes herein stated as the free act and deed of said company, and the said George M. Bartholomew and the said Horatio N. Otis, being by me sworn in due form of law, on their respective oaths say that they are president and secretary of said railroad company, as above stated; that the seal attached to the annexed instrument is the proper corporate seal of said company, and that the same and the signatures of said officers and trustees were placed there by authority of the directors of said company; and I further certify that I know the persons who made the said acknowledgment to be the identical persons described in and who executed the said annexed instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal the year, month, and day first before written.

[COM'S SEAL.] J. B. NONES,

Commissioner of the State of Massachusetts for the State of New York aforesaid.

The execution of the above mortgage is also acknowledged in the above form before said Nones as the commissioner of the States of Connecticut and Rhode Island, and as notary public of the State of New York.

The mortgage was "ratified and confirmed" by special acts of the legislatures of the States of New York, Massachusetts, Rhode Island, and Connecticut, at their several sessions, A. D. 1866.

33 *Decree appointing receivers, &c.*

Supreme judicial court.

SUFFOLK, *ss:*

GEORGE ELLIS AND ALII
vs.
THE BOSTON, HARTFORD AND ERIE RAILROAD Company and als. } In equity.

This cause came on to be heard on the application of the complainants for the appointment of receivers of all and singular the property of the Boston, Hartford and Erie Railroad Company, Brooks & Ball appearing as counsel for the complainants and sundry other bondholders, J. G. Abbott, esq., appearing as counsel for said company, Henry W. Paine, esq., appearing as counsel for John S. Eldridge, John P. Healy, esq., appearing as counsel for Thomas Talbot and Moses Kimball, and being fully heard, and the attorney-general of the Commonwealth being present at the hearing, and interposing no objection to the following decree, and it appearing to the court that it is necessary for the care and preservation of the property of said company that the said property be placed in the hands of receivers, subject to the further orders of the court, from time to time, as occasion may render necessary or proper:

It is now on this second day of August, A. D. eighteen hundred and seventy, ordered, adjudged, and decreed by the court, with the consent of all the parties above named, and heard before the court as aforesaid, that James W. Converse, Otis Norcross and Thomas W. Pierce, all of Boston, in said county of Suffolk, and George Talbot Olyphant, of the city, county, and State of New York, and George M. Bartholomew, of Hartford, in the State of Connecticut, be, and they hereby are, appointed receivers in this cause, with full power and authority to enter upon and

take possession of all and singular the railways of said Boston, Hartford and Erie Railroad Company, together with all of its lands, tracks, lines, rails, bridges, ways, depots, stations, water-tanks, shops, buildings, piers, wharves, locomotives, cars, erections, fences, fixtures, privileges, franchises, rights, leases, charters, leasehold-estates, leasehold-rights, and property, and all and singular all other property, real and personal, corporal and incorporeal, of the said Boston, Hartford and Erie
34 Railroad Company, and the earnings and income thereof and therefrom, including all the moneys, credits, choses in action, evidences of debt, books, deeds, leases, contracts, papers, and vouchers of said Boston, Hartford and Erie Railroad Company, by whatsoever name the same may be known or designated, and the same to demand, collect, and receive, by suit or otherwise, and with said moneys and other moneys which shall be received by said receivers in their said capacity, said receivers, in the exercise of the corporate rights of said Boston, Hartford and Erie Railroad Company, shall maintain and keep in repair the said railroads, and operate and carry on the same or such part thereof as may be practicable and for the interest of all parties concerned, and receive the income from and earnings thereof.

And to this end the officers, agents, and employees of said Boston, Hartford and Erie Railroad Company having the custody, possession, care, or control of said property, so to be taken possession of by said receivers, or of any part thereof, are hereby ordered and required, forthwith, upon the request of said receivers, to surrender, give up, and deliver the same to said receivers, their agents, and employees, and the legal possession and control of all said property shall vest immediately in said receivers.

And said receivers are empowered to retain and employ such legal counsel and attorneys, agents, servants, laborers, accountants, clerks, and assistants as they may deem necessary in the performance of their duties as such receivers, and to these ends and for these purposes to appropriate, apply, and use the moneys aforesaid, together with the current earnings of said railroads, and the income of and from said property, so far as the same shall be necessary, and to enter into contracts for obtaining supplies to operate said railroads, and for sustaining, keeping, or putting the same and the equipment thereof in proper repair and condition, and to rebuild or repair bridges, buildings, or structures and put up turn-tables and other structures necessary and proper for the advantageous and economical working of said railroads, and the transaction of their business.

That said receivers be authorized to settle, adjust, and satisfy all legal and just claims for damages or injuries to persons or property
35 that may be claimed against them, incurred while such receivers, and they are hereby authorized to pay the same from moneys in their hands as such receivers.

That they enter at once upon and take and retain possession of the offices of said company, and of all the property, deeds, leases, contracts, books, papers, and vouchers, of which they are hereby appointed receivers.

That such receivers, acting in good faith under this order, without negligence, and in the exercise of reasonable and ordinary prudence and care, shall not be answerable out of their own estates or property for any breach of any contract which may be entered into by them as such receivers in the execution of the powers herein vested in them, or for any injury to the person or property of third persons by accident in the prosecution of the business, or by the negligence of others employed by

said receivers; and in regard to all such breaches of contract and damages to persons and property of third persons, and for the just protection of said receivers generally and their indemnity against all their liabilities and contracts as such receivers, the moneys which may be in the hands of said receivers, together with the proceeds or product of the business to be carried on as aforesaid, shall be held to be applied as may be ordered or approved by the court.

It is also further ordered that said receivers shall, without unnecessary delay, upon entering upon their duties as such, make an inventory in detail of property which shall come into their hands as such receivers, with an apt description or designation of the same; also of all choses in action and evidences of debt due or owing to said company from third persons, and of all moneys on hand at the time of so taking possession by them, said receivers, and file said inventory in this cause in the office of the clerk of this court within ninety days from the date of this order, duly verified under oath by them.

They shall also keep, in systematic order, full, true, and accurate accounts of all their receipts and disbursements, including all receipts and disbursements made by their employees or agents, and they shall, within thirty days after the close of each month, during the continuance of this trust, and oftener, if required by the court, file in the office of the clerk of this court, duly verified under oath as aforesaid, a statement
36 for such month of their aggregate receipts and disbursements during that month, including the receipts and disbursements of their employees or agents, and a like statement of all liabilities incurred by them during the same period which shall remain unsatisfied, and also all liabilities incurred by them during the time of the trust, remaining unpaid, and such other accounts and statements as may be necessary to a clear understanding of the condition and administration of the trust in their hands during the period covered by such report, and a discrimination shall be made by said receivers in said statements or reports between receipts arising from their prosecution of the business and those from other sources.

Said receivers are also hereby authorized, at their discretion, to dismiss from service any agent or employee of said company other than the president, directors, treasurer, assistant treasurer, secretary, or clerk of said company, and from time to time fill the vacancy as occasion may require.

And said receivers are hereby authorized to pay and discharge, out of any moneys which shall be in their hands, as such receivers, any sums due from said Boston, Hartford and Erie Railroad Company for labor performed after the 1st day of June last, in operating its road, or supplies or material furnished the said company after that day for operating its road, including all salaries due or payable by said company to its officers for services performed by them for said company since said 1st day of June; and also such sums, not exceeding three thousand dollars, as shall be necessary to obtain possession of any books or papers of said company.

And it is hereby further ordered that said receiver shall be at liberty to pay from time to time, as the same shall become payable, if they shall think it expedient and proper so to do, any and all sums for insurance on the property, and all sums hereafter incurred in prosecuting or defending suits by or against said company, or by or against said receivers, or by or against the persons claiming to be trustees under the mortgage made by said company to Robert H. Berdell, Dudley S. Gregory, and J. C. B. Davis; also any and all sums which it may be neces-

sary to pay to preserve or protect any leasehold interests or leasehold rights, or other rights, or any property, easements, or rights of
37 way of said Boston, Hartford and Erie Railroad Company, including any and all taxes and legal assessments, and also including any and all sums now due or payable or hereafter due or payable by the Boston, Hartford and Erie Railroad Company under the indenture of lease made between the Norwich and Worcester Railroad Company and said Boston, Hartford and Erie Railroad Company, dated on the ninth day of February, A. D. eighteen hundred and sixty-nine, a copy of which is annexed to the bill of complaint in this cause.

And said receivers may borrow, for the purpose of preserving the rights of said Boston, Hartford, and Erie Railroad Company under said last-mentioned lease, and for the other purposes aforesaid, not exceeding one hundred thousand dollars, at such rate of interest as the said receivers may deem proper, and in order to secure the repayment, with interest, of all sums so borrowed by them, may mortgage or pledge the earnings of said railroads and the income from the property of said company and the said last-mentioned lease itself; and the moneys so borrowed by said receivers shall be held to be the receivers' indebtedness in their official capacity as receivers, and as such shall constitute a first and paramount lien over all other liens and incumbrances on said earnings, income, and lease, and as such be first paid.

And it is further ordered that the injunction heretofore issued in this cause be, and the same is hereby, continued until the further order of the court, and it is also ordered that the defendants, and each of them, their officers, agents, employees, servants, counsellors, and attorneys, be further restrained and enjoined from interfering in any manner with any of the property, books, papers, and vouchers aforesaid, except to deliver and surrender the same into the hands of said receivers; and it being requested by all parties that said receivers should not be required to give bond in any greater sum, it is further ordered that each of said receivers, within twenty days from the date hereof, give his several bond, in the penal sum of twenty-five thousand dollars, to the clerk of this court as obligee and his successor in said office, with two sureties to the satisfaction of said clerk or the assistant clerk of this court; said bond to be for the benefit of all persons concerned, and to be con-
38 ditioned for the faithful performance by such receiver of his duties as such.

But nothing herein contained shall be construed to preclude the officers and stockholders of said Boston, Hartford and Erie Railroad Company from free access to and use of the stock-books, transfer-books, and certificate-books of said company, and the records of the stockholders and directors of said company, or preclude said officers or stockholders, or the persons claiming to be trustees under the mortgage so made to Robert H. Berdell, Dudley S. Gregory, and J. C. Bancroft Davis, from free access to and examination of all the account-books and other books, papers, and vouchers of said company at reasonable times, or preclude the proper officers of said company from recording transfers of stock or issuing new certificates in proper cases, which they, said officers, are hereby directed to record, make, and issue accordingly; and all said stock-books, transfer-books, certificate and account books, papers, and vouchers, except such as are ordinarily used on the line of the road and at stations, shall, until otherwise ordered by the court, be kept at the principal office of said receivers in Boston.

And said receivers shall also pay, out of any moneys which may be in their hands as such receivers, such sum, not exceeding eight hundred

dollars per month, as in their judgment may be necessary or proper, to keep up the corporate organization and existence of said Boston, Hartford and Erie Railroad Company, and to pay the salaries of the necessary officers of the corporation for that purpose, and the rent of the necessary offices therefor.

And any or all of said receivers may be removed at any time by this court; and whenever a vacancy shall occur from any cause in the receivership, the same may be filled by the court; and until so filled the remaining receivers shall have and exercise all the powers which are herein conferred upon all of the receivers.

And it is further ordered that a certified copy of this decree be published once in each of three successive weeks in some newspaper printed in each of the following cities, to wit: Boston, New York, Providence, and Hartford, the first publication to be made as soon as may be.

39 And either party may apply from time to time to this court for further orders, directions, or instructions, as occasion may require.

By the court.

GEORGE W. NICHOLS,
Ass't Clerk.

AUGUST 2, 1870.

A true copy. Attest:
GEORGE W. NICHOLS, *Ass't Clerk.*

40 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

To the Boston, Hartford & Erie Railroad Company, a corporation having its usual place of business in Boston, in said county of Suffolk, and to Robert H. Berdell, of Goshen, in the State of New York; Dudley S. Gregory, of Jersey City, in the State of New Jersey, & John C. Bancroft Davis, of New Hamburg, New York; John S. Eldridge, of said Boston; Mark Healey, of Lynn, in the county of Essex; Henry N. Farwell, of said Boston; Thomas Talbot, of Billerica, in our county of Middlesex, & Moses Kimball, of said Boston, greeting:

We command you that you appear before our supreme judicial court, next to be holden at Boston, within our said county of Suffolk, on the first Monday of September next, then and there to answer to a bill of complaint exhibited against you in our said court by George Ellis, of the city, county, & State of New York, and Matthew Bolles & Michael S. Bolles, both of Boston aforesaid, & both copartners under the firm and style of Matthew Bolles & Company; and you are notified to appear before some justice of our said court, at the court-house in said Boston, on the twenty-third day of July current, at nine o'clock a. m., to show cause, if any you have, why an injunction should not issue as prayed for in said bill of complaint, and why a receiver should not be appointed as therein prayed, and that at the place, day, & hour above specified, to wit, on said twenty-third day of July, at nine o'clock a. m., you are at liberty to show cause against the further continuance of the injunction granted in this case.

Hereof fail not, under the pains and penalties in the law in that behalf provided.

Witness, Reuben A. Chapman, esquire, at Boston, the twentieth day of July, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] GEO. C. WILDE, *Clerk.*

41 SUFFOLK, *ss:*

BOSTON, *July* 21, 1870.

I this day summoned the within-named Boston, Hartford & Erie Railroad Company to appear at court, as within directed, by giving to Samuel Hall, jr., the treasurer thereof, in hand, an attested copy of the within subpœna. On the same day I summoned the within-named John S. Eldridge, Henry N. Farwell, Moses Kimball, & Mark Healey to appear as above, by delivering to each of them an attested copy of the within subpœna.

HARUM MERRILL,
Dep'ty Sheriff.

Fees: Service & travel, 2.58; copies & stamps, 5.25—$7.83.

MIDDLESEX, *ss:*

July 23rd, 1870.

On the morning of this day, before nine o'clock, I summoned the within-named Thomas Talbot to appear as within named by giving him an attested copy of this subpœna in hand.

JEFFERSON BANCROFT,
Deputy Sheriff.

Fees: Service, 50; travel to service & return, 2.00; copy & stamp, 1.05—$3.55.

(Indorsed:) No. 93 eq. Subpœna. Geo. Ellis & als. B., H. & E. R. R. Co. Brooks & Ball, 190.

42 Supreme judicial court.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

GEORGE ELLIS AND OTHERS
vs.
THE BOSTON, HARTFORD AND ERIE RAILROAD Company and others. } In equity.

And now, on this twenty-fifth day of February, A. D. 1871, it appearing to the court that Robert H. Berdell, Dudley S. Gregory, John C. Bancroft Davis, Mark Healey, and Henry N. Farwell, defendants in this cause, have been personally served with process therein, pursuant to the orders of this court heretofore made, that the times limited for said defendants' appearance by said orders have long since elapsed, and that no appearance for said defendants or for any or either of them has been entered in this cause, on motion of Brooks and Ball, solicitors for the complainants, it is ordered that the bill of complaint against said defendants be taken as confessed.

By the order of Horace Gray, jr., esq., one of the justices of said court.

GEO. C. WILD, *Clerk.*

FEBRUARY 25, 1871.

43 (Indorsed:) 562 eq. Commonwealth of Massachusetts, Suffolk, ss: Supreme Judicial Court. George Ellis and others vs. The Boston, Hartford & Erie Railroad Co., et als. Order to take the bill for confessed against Robert H. Berdell, Dudley S. Gregory, John C. Bancroft Davis, Mark Healey, & Henry N. Farwell.

44 *Act incorporating the Boston, Hartford and Erie Railroad Company.*

Whereas, by grants heretofore made to sundry railroad corporations, this State has declared her desire and policy to be that railroad communication shall be opened through the central portion of this State, extending to and connecting with the Erie Railroad at Fishkill on the west, and the harbor of Boston and the city of Providence on the east; and whereas there still remains some portions of said line to be constructed, which unbuilt portions the present grantees of power to build have been unable to finish; and whereas there is good cause to believe that under one corporation said line can be completed, and so answer the end and purpose of the creation of said several corporations: Therefore,

Resolved by this assembly, SECT. 1. That Joseph W. Clark, Albert G. Farwell, James A. Dupee, Samuel P. Benson, Gilbert W. Phillips, Edward Crane, Henry Sayles, S. Augustus Dix, Alfred Smith, George M. Bartholomew, Calvin Day, Edmund G. Howe, Charles Hart, Shubael Hutchens, Orry Taft, R. M. Clark, and Alonzo Milliken, with such other persons as they shall associate with them for that purpose, and their successors, are hereby constituted a body politic and corporate, by the name of the Boston, Hartford and Erie Railroad Company, and by that name to sue and be sued, to plead and be impleaded, in any court in this State, to have and make a common seal, and the same to break, alter, or renew at pleasure, with the powers and privileges, and subject to the duties, restrictions, and liabilities of the statute laws of this State, passed May session, 1849, entitled "An act relating to railroads,"
45 and of the several acts passed, or that may be passed, in addition to or in alteration of said act.

SECT. 2. The capital stock of said company shall be ten millions of dollars, to be divided into shares of one hundred dollars each, with the privilege of increasing said capital stock to fifteen millions; and such company may issue and dispose of the same from time to time to such an amount within said limits as may be necessary to purchase the franchises, railways, or railway property they are authorized to purchase by this act, and also to purchase any bonds or other indebtedness of the corporation whose franchise, railway, or property they shall obtain under the provisions of this act, and to finish such portions of said lines as are yet unbuilt, and to complete their entire line of railway.

SECT. 3. The persons named in the first section of this act, or a majority of them, shall open books to receive subscriptions to the capital stock of said company at such time and place as they, or a majority of them, may appoint, and shall give such notice of the time and place of opening said books as they may deem reasonable, and shall receive such subscriptions under such regulations as they may adopt for the purpose, and may organize said company when fifty thousand shares are subscribed for; and in case said subscription shall exceed one hundred thousand shares, the same shall be reduced and apportioned in such manner as may be deemed most beneficial to the company, and after the books are closed and the stock apportioned and assigned, as aforesaid, the persons named in the first section hereof, or a majority of them, shall call the first meeting of the stockholders of said company, in such way and at such time and place as they may appoint, for the choice of directors of said company, who shall hold office for one year and until others are elected in their place; and in all meetings of the stock-
46 holders of said company each share shall entitle the holders thereof to one vote, which vote may be given by said stockholder in

person or by lawful proxy; and in case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, such company shall not for that cause be deemed dissolved, but such election may be held on any day which shall be appointed by the directors, and lawful notice of the time and place given.

SECT. 4. Said Boston, Hartford and Erie Railroad Company may purchase, upon such terms and conditions as may be mutually agreed upon by the several corporations interested, at meetings of said several corporations legally called for such purpose, the franchise, the whole or any part of the railway or railway property of any railroad company located in whole or in part in this State, whose line or a portion of whose line of railway, constructed or chartered, now forms part of a railway line from the harbor of Boston, passing through Thompson to Willimantic, and from Providence through Willimantic to Hartford, Waterbury, and thence toward the North River, with the purpose of reaching a point at or near Fishkill, in the State of New York; and in case said Boston, Hartford and Erie Railroad Company shall purchase the franchise of the Thompson and Willimantic Railroad Company, they shall complete and run the whole line between Mechanicsville and Willimantic within one year from the time they shall run over or use as a railway any portion of said line. And said Boston, Hartford and Erie Railroad Company may make any lawful contract with any other railway company with which the track of said railroad may connect, in relation to the business or property of the same, and may take lease of any railroad, or may lease their railway to, or may make joint stock with, any
47 connecting railway company in the line of, and forming a necessary part of, and running in the same general direction as, their said route, and between its terminal points. And in case said company shall purchase or lease any connecting railroad, they shall run trains over the purchased or leased roads in such manner as to accommodate the business and travel of said road as well as it is now accommodated. And whenever certificates, under oath of the secretary of said Boston, Hartford and Erie Railroad Company and the secretary of the other contracting corporation, shall be filed in the office of the secretary of state, showing that said Boston, Hartford and Erie Railroad Company has purchased, and said other contracting corporation has sold, under the provisions of this act, their franchise, or the whole or any portion of their railway or railway property, then said Boston, Hartford and Erie Railroad Company shall become possessed of the property bargained, sold, and conveyed; and all of the grants heretofore made or that may be made said corporation making such sale, and transferred by the vote of said corporation, shall vest, be, and remain in and to said Boston, Hartford and Erie Railroad Company as if originally granted to or obtained by them.

SECT. 5. Nothing herein contained shall in any manner affect any lien or mortgage upon the railroad or property of any corporation which may be conveyed to said Boston, Hartford and Erie Railroad Company, or any part thereof, or in any manner prejudice or impair the right of any creditor of any such corporation; nor shall any creditor who shall not sell or assign his debt or claim, as herein provided, be in any way or manner benefited, nor shall his rights or position be in any way changed or affected by the assignment to said Boston, Hartford and Erie Railroad Company of the debt or claim of any other person, or by the assignment of any contract. Said Boston, Hartford and Erie Railroad Company
48 purchase any claims existing against any of the railroad companies whose franchise or property they may purchase or lease, and

may issue stock in purchase of the same; and no debt, contract, or claim of any kind which may be purchased by said company shall be considered as cancelled or discharged, but the company shall hold the same in all respects as and with the rights and powers of the party assigning the same, but without the right to sell or assign the same to any person or corporation. And if any creditor of the railway company whose railway and property shall be purchased or leased by said Boston, Hartford and Erie Railroad Company shall commence proceedings to enforce any claim, lien, or mortgage, said Boston, Hartford and Erie Railroad Company shall have the right, in respect to all debts or claims which may have been assigned to it, to share in the benefits of such lien or mortgage in the same manner as the creditor assigning the same would have had, and also the right to commence or join in any suit or proceeding which may be necessary for securing or enforcing such rights or for obtaining or sharing the benefit of such lien or mortgage. And said company shall also have the right at any time, in its own name and for its own benefit and protection, to institute such suits and proceedings as may be necessary for enforcing and obtaining the benefits of any debt, claim, lease, contract, or any lien, mortgage, or other right which it may have purchased or had assigned to it as herein provided, and shall have all the rights in respect to any mortgage-bonds which may be assigned to it, which any other bondholder may have, to participate in the appointment of trustees or in any other proceedings or measures which may be adopted for the common benefit of such bondholders; and whenever any payment or dividend shall be made to any bondholders or other creditors having such lien or mortgage from
49 the income or sale of the property mortgaged, or on which such lien exists, the company shall be entitled to a pro rata dividend or payment upon all claims, debts, or bonds of a like class which may have been assigned to it.

SECT. 6. All persons holding any stock of any company whose railroad may be purchased by said Boston, Hartford and Erie Railroad Company, or any bond, debt, or claim against the same, in any fiduciary or representative capacity, or as trustee, guardian, executor, or administrator, or by way of pledge or mortgage, are hereby fully authorized to accept for the same the stock or bonds of said Boston, Hartford and Erie Railroad Company, if any bonds shall be issued, and to sell any bond, debt, or claim which said company is authorized to purchase as though they held the same absolutely in their own right, and shall hold the new stock or bond which they shall receive upon the same trust and in the same manner as that which they held originally.

SECT. 7. Said Boston, Hartford and Erie Railroad Company is hereby authorized to contract with the trustees or any person or persons having lawful possession under any mortgage or lien on any railroad they may purchase or lease, and such trustees or person or persons having such lawful possession are hereby authorized to contract with said Boston, Hartford and Erie Railroad Company, upon such terms as may be mutually agreed upon, to lease to said last-named company such mortgaged property by them held, or to permit said Boston, Hartford and Erie Railroad Company to run over such railroad held by them or any of them, under such mortgage, for such term of time as may be mutually agreed upon, or until the bonds and coupons thereto belonging secured on such railroad shall have been purchased or acquired by said Boston,
50 Hartford and Erie Railroad Company, and thereupon said trustees shall be discharged from any further duties or liabilities under their trust.

SECT. 8. Said Boston, Hartford and Erie Railroad Company may, by a vote of the stockholders at a meeting lawfully called for that purpose, secure any bonds they may issue under the provisions of the statute law of this State, passed May session, 1849, entitled "An act relating to railroads," or of any act in addition to or in alteration of said act, by a mortgage of their railway and all their property, rights, and franchise, or of any part thereof obtained, or which they may thereafter obtain in this State, and also in the State of Massachusetts and New York and Rhode Island, if empowered so to do by the laws of any State into or in which the railroad property or rights mortgaged may be situate, by deed duly executed by their president under the corporate seal, to the treasurer of this State and his successors in office, in trust for the holders of said bonds, and recorded in the office of the secretary of this State, and in such other mode and manner as may be required by the laws of the State in which any of the railway property or rights so mortgaged may be situate. Said company may from time to time, with the consent of the trustee, under the mortgage, dispose of such portion of the property included in the mortgage as may become unfit for its use, and may purchase such additional or other property as shall be more convenient therefor, which shall be deemed to be included in the mortgage in the place and stead of that disposed of. Provided always, that no bond shall be issued for a less sum than five hundred dollars, and also that there shall not be outstanding at any one time mortgaged bonds of said Boston, Hartford and Erie Railroad Company, or mortgaged bonds of any other company whose railroad they may purchase, to a greater amount
than that limited by the provisions of the charter of the Hart-
51 ford, Providence and Fishkill Railroad Company, to wit, one
half the sum which the president and chief engineer certify to the comptroller of this State under oath so far as expenditures shall be made by said Boston, Hartford and Erie Railroad Company, and upon their best information, knowledge, and belief, as to expenditures made by the corporations whose railroad or property said Boston, Hartford and Erie Railroad Company may purchase, to have been actually expended upon that portion of the road and property included in said mortgage, and any false swearing in this matter shall subject the offender to the pains and penalties of perjury; and it shall be the duty of the comptroller to see that the bonds resting and secured on said railway, property, and rights and franchise, or any portion thereof, with those registered in his office and uncancelled, shall never exceed the amount limited in this proviso.

SECT. 9. If said Boston, Hartford and Erie Railroad Company shall not organize and expend money, in constructing said road, to the amount of two millions of dollars, before the fourth day of July, 1866, then the rights, franchises, and powers of said corporation shall be null and void.

SECT. 10. This act may be altered, amended, or repealed at the pleasure of the general assembly.

Approved June 25th, 1863.

52 EXHIBITS A′, B′, AND C′.

Memorandum of an agreement made and entered into at Hartford, Conn., this twenty-eighth day of August, A. D. one thousand eight hundred and sixty-three, by and between the Hartford, Providence and Fishkill Railroad Company, by Calvin Day, their president, of the first part, and the Boston, Hartford and Erie Railroad Company, by Joseph W. Clark, James A. Dupee, and Edward Crane, their committee, of

the second part; each party acting under, in conformity to, and carrying out the agreeing votes of said corporations in the matter of this contract in and by this instrument to be perfected.

SECTION 1. Whereas it is intended by the party of the second part to extend the railroad of the party of the first part, so as to connect it with the Erie Railroad at Fishkill on the west and with the harbor of Boston and the city of Providence on the east; said party of the first part, with the view of promoting said object, and in consideration of the matters hereinafter contained, does hereby agree to lease to said party of the second part, for the term of nine hundred and ninety-nine (999) years, the railroad, the whole of the estate and property of said party of the first part, real, personal, and mixed, of every name and nature, however described, and wherever situated and being; and also to sell and convey by deed, in fee-simple, subject to said lease, their railroad franchise, the above-described estate and property, to said party of the second part; and both said lease and deed in fee-simple to be made subject to certain mortgages and the rights of trustees and mortgagees under the same, which mortgages are recorded in the office of the secretary of the State of Connecticut, and in the office of the secretary of the State of Rhode Island, to which records reference is had for a description of the property mortgaged and the terms of the same; and also subject to land-claims, if any such exist.

SECT. 2. Said party of the first part agrees to permit said party of the second part to use their name, in any legal and proper manner, to enable said party of the second part to use and enjoy the rights of property herein described, at the expense of said party of the
53 second part; and, at the expense of said party of the second part, to do all lawful corporate acts and things, on request of said party of the second part, to enable them to obtain as much more lands for depot grounds, and to improve their lines of sight and width of land for slopes and embankments, as said party of the second part may desire and may lawfully obtain, and at the expense of the party of the second part; and to do such corporate acts as may be necessary for the full enjoyment of said leased railway and property, or of any property that may be lawfully obtained to be used in the operations of said railway, in as full and ample a manner as said party of the first part is entitled to have and enjoy said railway and property, or might or could enjoy any enlargement or addition thereto. And said party of the first part agrees to permit said party of the second part to use their name in the prosecution of any proper suit at law or equity, and to defend in their name any suit brought against said party of the first part, and to aid in the prosecution or defence of said suit by furnishing proofs known to them, and in all proper ways to aid in the prosecution or defence of such legal proceedings; all of which is to be at the expense of said party of the second part. And said party of the first part agrees to permit said party of the second part to make any and all reports and returns by law required, or that may be required, to be made by the said party of the first part in the name of the party of the first part, and said party of the first part agrees to make all necessary authentications therefor.

SECT. 3. Said party of the first part agrees that, during the continuance of the said lease, said party of the second part may make any lawful additions, alterations, or changes they may desire in the number of tracks, curves, slopes, and embankments, lines of sight, width of roadbed, or depot grounds and buildings and fences, and in anything pertaining to said railroad, or in the equipments or furniture, proper to make

said railway as good and perfect a railway as said party of the second part may desire; and that, at the expiration of said lease, such estate and property as may at that time exist, being of the railway and equipments belonging to and used with said railway, may be surrendered and delivered to said party of the first part, who shall either pay, in consequence of such surrendry and delivery, such sum as such estate and property shall be worth over and above the present value of the estate and property leased, together with such sum as shall have been by said party of the second part paid on the bonds and coupons secured by the aforesaid mortgages, or shall, at the option of the party of the
54 first part, continue said lease for another term of the same length of time as the above, at an annual rent of one dollar.

SECT. 4. And, in consideration of the agreements of said party of the first part, said party of the second part does hereby promise and agree that, upon the execution and delivery of said lease and deed in fee-simple to the trustees hereinafter named, he will, within five days from date, deliver, in payment of the estates conveyed, certificates for thirty-five thousand shares of the capital stock of the Boston, Hartford and Erie Railroad Company, fully paid up, to Shubael Hutchins, George M. Bartholomew, and John Hooker; and the same shall be held by said Hutchins, Bartholomew, and Hooker, in trust for the benefit of said party of the first part, upon and under the following stipulations and agreements: Said party of the second part may, by their treasurer, or any other person or persons authorized by a vote of their directors may, from time to time, before the first day of April, 1866, demand, have, and receive of such trustees any portion or portions, or all of twenty-five thousand three hundred and eighty shares of said stock, which shall be set apart from said aggregate of stock by said trustees, on payment to said trustees of twenty (20) dollars for each and every share so demanded and transferred by said trustees; and said trustees shall receive from said party of the second part, or from any person or persons by their directors authorized, the stock of said corporation of the first part in payment for said stock of said party of the second part, and transfer two of said shares for every preferred, and one share for every share of common stock of said party of the first part, assigned in blank and delivered to such trustees. And said party of the second part hereby stipulates and covenants that, if by any means whatever, or for any reason whatever, any of the general stockholders of said party of the first part shall fail (except through his own neglect to present his claim within the time limited) to receive from the funds herein provided either twenty (20) dollars in cash for each and every share held by him, or a share of stock in the company of the second part, or his pro rata in cash and stock out of said separated stock, amounting to twenty-five thousand three hundred and eighty (25,380) shares, herein designated, (except where said stockholders shall have elected to receive and shall have received ten (10) dollars in cash in lieu of said stock,) that then the party of the second part will transfer and deliver to each and every of said stockholders so failing to receive said stock or money from said fund one share of the stock of the party of the second part, or pay him
55 twenty (20) dollars, within sixty days from and after April first, 1866, or within sixty days after presentation of stock and demand upon said party of the second part.

SECT. 5. And said trustees shall be empowered by said party of the first part to liquidate and adjust any and all claims and demands against said party of the first part other than the above-named mortgage claims and interest accrued or to accrue thereon, with the approval of the di-

rectors of said company, party of the second part; and whenever any such claims or demands shall be liquidated, and the balance due ascertained and established in law or equity or in the manner aforesaid, said trustees shall receive the same as cash from the treasurer of said party of the second part, or from any person or persons by vote of the directors of said company of the second part authorized to have and receive any portion of said stock, being the lawful owner or owners of said claim or claims, in payment for stock, on the assignment of such claim or demand, and the delivery to such trustees of any voucher evidencing such claim or demand; and thereupon said trustees shall transfer to such corporation of the second part, or other person or persons authorized to receive the same, four shares of said stock remaining after said twenty-five thousand three hundred and eighty (25,380) shares are set apart as aforesaid for every one hundred dollars of liquidated claim or debt so transferred and received by them.

SECT. 6. On and after the first day of April, 1866, said trustees shall hold all said stock so deposited in their hands by said party of the second part, if any remain untransferred, relieved from any right of said party of the second part, their treasurer, or any other person or persons, to have or take the same from the trustees in manner and form as above; and thereupon shall, within thirty days thereafter, assign and distribute to those who may present to them certificates of the capital stock of the party of the first part, assigned in blank, and deliver the same to said trustees, the 25,380 shares of capital stock of said party of the second part, set apart as aforesaid, or so much as shall remain in their hands, and any moneys in their hands received for any part of said stock taken up, in such manner as that the holders of the common stock of the party of the first shall receive one share, and the holders of preferred stock two shares, or their ratable proportion of stock and money in that proportion; or if all the shares shall have been taken up, said common stock shall receive twenty dollars, and said pre-
56 ferred stock forty dollars, on each and every share of stock assigned and delivered as aforesaid; and said trustees shall hold said stock and moneys composing and representing said 25,380 shares in their hands for a term of six years from and after April first, 1866, if the same shall not be called for before said time, and if any remain at the expiration of said time, they shall deliver the same to said party of the second part.

SECT. 7. Of the remaining portion of said shares, to wit, nine thousand six hundred and twenty (9,620) shares, if any portion of the same shall, on the first day of April, 1866, be in the hands of the trustees, and any claim or demand, other than the above-named mortgage debt and interest on the same, shall exist against the corporation, party of the first part, known to the trustees, and the amount is settled at law or equity, or in the manner above provided, said trustees shall proceed to sell at public sale, duly advertised for seven days in two newspapers printed in Hartford, within thirty (30) days from said first day of April, 1866, so much of said stock as will be sufficient to pay said claims so settled or liquidated; and the balance of said stock, if any remains, shall then be by said trustees assigned to said party of the second part; and if no claims or demands as aforesaid, known to said trustees as aforesaid, exist on said first day of April, 1866, then said trustees shall transfer to said party of the second part any and all of the stock in this item named, and remaining in their hands, to said party of the second part.

SECT. 8. Said trustees shall, so far as the same may be practicable, receive with and upon all claims for indebtedness an assignment in

blank of such indebtedness, and from any and all persons to whom they shall deliver an apportionment upon their stock, an assignment in blank of such stock, and deliver such evidence of debt and such stock so obtained by such trustees to said party of the second part; and such assigned claim and such assigned and transferred stock shall be vested in said party of the second part so far as the above acts of the trustees can legally vest the same.

SECT. 9. Any stockholder of the party of the first part may elect to receive, and shall be entitled upon such election to receive, in the manner hereinafter provided, cash instead of stock of the Boston, Hartford and Erie Railroad Company, at the rate of twenty (20) dollars per share for every share of preferred stock, and ten (10) dollars per share for every share of common stock held by him; in case of which election such stockholder shall, within thirty days from the execution of this contract, lodge written notice of such election and of the number and character of the shares held by him with the cashier of the Bank of Hartford County, in the city of Hartford, or with the cashier of the Arcade Bank, in the city of Providence, and leave with said cashier the certificate of his stock, with a power of attorney executed in blank for the transfer of the same; and the Boston, Hartford and Erie Railroad Company shall, within sixty days from the date of this contract, deposit, in the banks aforesaid, to the credit of the particular stock holders who shall have left such notice, certificate, and power of attorney at such bank, the amount to which they are severally entitled, at the rate aforesaid, upon the stock so presented by them; upon which payment said Boston, Hartford and Erie Railroad Company shall be entitled to receive from said cashiers the certificates and powers of attorney so lodged with said cashiers and pertaining to the stock so paid for; and upon such payment having been made by said Boston, Hartford and Erie Railroad Company, and upon the delivery to the trustees hereinbefore named of the certificate of each of said cashiers that all the stockholders so giving them notice and so presenting their claims within the time aforesaid have been actually paid as above, then the trustees shall deliver to the Boston, Hartford and Erie Railroad Company said contract and instruments of lease and conveyance so, as before provided, deposited with them, provided the conditions stated in the 12th section be also complied with; and any stockholder who shall elect to receive cash at the rate aforesaid instead of stock of the party of the second part, and who shall fail to present his claim to one of said cashiers within the time so limited, may present the same afterwards, at any time within four months from the date of this instrument, to the treasurer of the party of the second part, upon which presentation he shall be entitled to such cash payment at the rate aforesaid in four months thereafter, provided that he shall at the time of such payment deliver to the treasurer of the party of the second part his certificate of stock, with a power of attorney executed in blank for the transfer of the same.

SECT. 10. Said party of the second part agrees from time to time to pay all proper costs and charges attending the acts and things to be done and performed by said trustees, and reasonable compensation for their services; and from time to time, from and after the time said party of the second part shall become possessed of said above-described railway and real, personal, and mixed estate, and shall use and operate the same under said lease, said party of the second part will pay all national, State, and municipal or other taxes and assessments that may be lawfully imposed or laid on said estate or property to the person or persons lawfully authorized to receive the same, and save

said party of the first part from any liability or costs on account of said taxes or assessments.

SECT. 11. Said party of the second part agrees to protect and save said party of the first part harmless from the payment of the principal sum due or to be due on any bond secured to be paid in and by the mortgages above named, and also from any interest due and accrued or that may accrue on said bonds or on any coupons of the same, and also will save said corporation of the first part harmless from any and all lawful claims, demands, contracts, and obligations of every kind.

SECT. 12. It is mutually agreed that this contract shall be carried into effect in manner following: This contract shall be executed in duplicate; said lease and deed shall be signed and sealed, and, with said contract in duplicate, delivered to said trustees under this contract; said certificate for thirty-five thousand (35,000) shares of the capital stock, fully paid up, shall also be delivered to said trustees; all which acts and things shall be done and performed within five (5) days from the date of this instrument. Upon the purchase by said party of the second part, and a valid conveyance to them (which purchase the party of the second part agrees to make and such conveyance to obtain) of the railroad of the Southern Midland Railroad Company, extending from the foot of Summer street, in Boston, Massachusetts, to Mechanicsville, in Thompson, in Connecticut, and to Southbridge, in Massachusetts, being in all about 77 miles of railway, and the franchise and property of the Thompson and Willimantic Railroad Company, being about twenty-three miles in length, together with all the property, rights, privileges, appurtenances, and franchises of both said corporations; and the unconditional and indefeasible transfer and conveyance of the same to the Boston, Hartford and Erie Railroad Company, free from any and all claims, demands, and encumbrances, excepting and only subject to an indebtedness amounting to not more than one million of dollars in the whole, whether secured by a mortgage on said Southern Midland Railroad or however evidenced or secured; and with this further understanding and agreement, that the completion of all unfinished portions of said Southern Midland Railroad to Mechanicsville and to Southbridge, and the needful repairs to put said road in good running order, shall be done, made, procured, and paid for from and out of the above-named sum of one million of dollars, and so as not to exceed said amounts in debt, demands,
59 and encumbrances, including the expenditures for so completing and repairing said railroad, and that in consequence of such purchase, and to pay therefor, no more than fifty thousand (50,000) shares of capital stock of said party of the second part has been or shall be paid, or no greater sum than five millions of dollars has been or shall be agreed to be paid, excluding said indebtedness of one million of dollars; and a certificate, evidencing such facts, shall, under a vote of the directors of said party of the second part, be made, signed, and certified by the president or acting president and secretary of said company, under the seal of said company, party of said second part, and shall be delivered to said trustees by said party of the second part within fifteen days from and after such delivery of said lease, deed, contract, and stock to said trustees; and thereupon, and after the delivery to said trustees of the certificates of certain cashiers, as provided for in the 9th section of this contract, said trustees shall deliver said lease, deed, and one copy of said contract to said party of the second part, and one copy of said contract to said party of the first part, and hold said stock as trustees under this contract; all which shall be done as and in fulfilment of the stipulations in this instrument.

SECT. 13. It is also agreed by said party of the second part that in case any shares of the capital stock of said company of the second part shall be issued, other than the fifty thousand (50,000) and the thirty-five thousand (35,000) shares before named, and other than stock issued at par, and paid for in cash in full, while said stock or any portion of the same remains in the hands of trustees, said trustees shall be entitled to have and receive such proportion of the same as the stock in their hands would be pro rata entitled to have on a distribution based on the present proportion of the above 35,000 shares to the whole of said eighty-five thousand (85,000) shares, and hold such new stock on the same terms as they hold the stock in this instrument above agreed to be placed in their hands.

SECT. 14. In case of the death, mental incapacity, or resignation of any trustee, any judge of the superior court in Connecticut, on application of any party in interest, and on such notice to the trustees and all parties interested as such judge may deem reasonable, may fill any vacancy in such board of trustees; and if the application for the appointment of trustees shall be for reason of mental incapacity, such judge shall have full power to adjudicate thereon and to remove for such cause and fill the vacancy thus made.

60 SECT. 15. It is mutually stipulated between said parties that said party of the second part does take and receive said lease and deed upon the understanding that said party of the first part does not guarantee the sufficiency of the conveyance of the property intended to be conveyed, or that they have legal power to make and execute such instruments; and that if, in making the same, said corporation, or any officer or stockholder, shall have transcended his lawful powers, said company and said stockholders shall not be holden to make good any part of the contract of conveyance; nor shall any officer or agent of said party of the first part executing this contract or the instruments stipulated for therein be personally holden, or in any manner affected, by any covenant or other undertaking therein. And it is further agreed that if any other or further acts shall need to be done, or any other or further instrument shall need to be made by said party of the first part, to insure to said party of the second part the use and title to the franchise or property in this instrument agreed to be transferred to said party of the second part, and not inconsistent with the stipulations of this article, the act shall be done and instrument made on request and at the expense of said party of the second part, if the same can be done consistently with the powers they now have by law or which may hereafter be obtained in any lawful manner.

SECT. 16. Said party of the second part agrees that, in operating said railway, whether under said lease or under the deed in fee-simple, they will run trains over said railroad in such manner as to accommodate the business and travel of said road as well as the same is now accommodated, and that they will save said party of the first part harmless from all claims for damages to persons or property which may be made by any person or persons for or on account of loss or injury to person or estate occurring from any act of omission or commission by the party of the second part in the possession or use of said railway, and all expenses connected therewith.

SECT. 17. It is expressly stipulated and understood that nothing in this instrument shall, in any way or manner, affect the rights of the present trustees of the road of the party of the first part.

SECT. 18. Said party of the second part agrees that, at expiration of said lease, they will yield up and surrender to said party of the first

part or its assigns said leased estate and property in as good order and condition as when received, proper use and wear, fire, flood, and
61 unavoidable casualties excepted; provided said party of the first part shall pay, as hereinbefore provided, and shall not elect to renew the lease of said property as above provided.

SECT. 19. Said parties mutually stipulate, each with the other, that all promises and agreements made to or by one party to the other party in this instrument shall extend to, and operate for the benefit of, the successors or assigns of the party to whom and for whose benefit such agreement or promise is made.

In testimony whereof the Hartford, Providence and Fishkill Railroad Company, by Calvin Day, their president, fully authorized in the premises, and the Boston, Hartford and Erie Railroad Company, by Joseph W. Clark, James A. Dupee, and Edward Crane, a committee of such corporation, fully authorized in the premises, have hereunto set their official signatures and seals, at Hartford, in Connecticut, this twenty-eighth day of August, A. D. 1863.

HARTFORD, PROVIDENCE AND FISHKILL RAILROAD CO.,
By CALVIN DAY, *Pres't.* [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN HOOKER.
T. C. PERKINS.

BOSTON, HARTFORD AND ERIE RAILROAD CO.,
By JOSEPH W. CLARK,
JAS. A. DUPEE,
EDWARD CRANE,
Committee. [SEAL.]

Signed, sealed, and delivered in presence of—
THOMAS E. GRAVES.
WARREN HUNT.

62 This indenture of lease, made by and between the Hartford, Providence and Fishkill Railroad Company, by Calvin Day, president of said company, and by vote of said company, fully empowered in the premises, of the first part, and the Boston, Hartford and Erie Railroad Company, by Joseph W. Clark, James A. Dupee, and Edward Crane, committee of said company, fully empowered in the premises, witnesseth:

That, in consideration of one dollar received, and of the agreements contained in a written contract between said parties to this lease, and which contract is to be recorded with this lease, said party of the first part doth herein and hereby demise and lease to said party of the second part the railroad, the whole of the estate and property of said party of the first part, real, personal, and mixed, of every name and nature, however described, and wherever situate and being:

To have and to hold the same, with all the rights, privileges, and appurtenances thereto belonging, for the term of nine hundred and ninety-nine (999) years from this date, to said lessees, their successors and assigns.

This lease is made subject to the provisions, and to carry out the above-named contract, to which reference is had for a full description of the terms and stipulations in the same.

In testimony whereof the said parties, the said Hartford, Providence

and Fishkill Railroad Company, by Calvin Day, president of said company, fully authorized in the premises, and the Boston, Hartford and Erie Railroad Company, by Joseph W. Clark, James A. Dupee, and Edward Crane, their committee, fully authorized in the premises, have hereunto set their official signature and seal at Hartford, Connecticut, this 28th day of August, A. D. 1863.

HARTFORD, PROVIDENCE AND FISHKILL RAILROAD CO.,
By CALVIN DAY, *President.* [L. S.]

Signed, sealed, and delivered in presence of—
JOHN HOOKER,
T. C. PERKINS.

[Revenue stamp.]

63 STATE OF CONNECTICUT,
Hartford County, ss:

AUG. 28, A. D. 1863.

Then personally appeared the Hartford, Providence and Fishkill Railroad Company, by Calvin Day, the president of said company, fully authorized in the premises, signer and sealer of the above instrument, and acknowledged the same to be the signature and seal of said company, and that the same was their free act and deed, before me.

THOMAS E. GRAVES,
Commissioner of the Superior Court.

[Revenue stamp.]

STATE OF CONNECTICUT,
Hartford County, ss:

HARTFORD, *Dec.* 3, 1863.

Then personally appeared the Hartford, Providence and Fishkill Railroad Company, by Calvin Day, the president of said company, fully authorized in the premises, signers and sealers of the above instrument, and acknowledged the same to be signed and sealed by said company, and that the same was their free act and deed, before me.

CHARLES E. PERKINS,
Justice of the Peace.

[Revenue stamp.]

64 To all people to whom these presents shall come, greeting:

Know ye that we, the Hartford, Providence, and Fishkill Railroad Company, by virtue of authority from the legislatures of Connecticut and Rhode Island, and in accordance with and in fulfilment of a lawful vote of said company, authorizing Calvin Day, president of said company, in the name and behalf of said company, to do and perform all things in the premises, for divers good causes and considerations, and especially in consideration of one dollar received to our full satisfaction, and of the agreements contained in a written contract between said grantors and the grantees in this conveyance, and which contract is to be recorded with this conveyance, do give, grant, bargain, sell, and confirm to the Boston, Hartford, and Erie Railroad Company the railroad franchise, the railroad, the whole of the estate and property of said grantors, real, personal, and mixed, of every name and nature, however described, and whereon situate and being:

To have and to hold said franchise and property to the sole use of said grantees and their successors and assigns forever.

The above conveyance is made subject to the provisions, and to carry out the above-named contract, to which reference is had for a full description of the terms and stipulations in the same.

In witness whereof said grantors, by Calvin Day, president of said company, thereunto fully authorized, has hereunto affixed their signature and the seal of said company at Hartford, in Connecticut, this twenty-eighth day of August, anno Domini one thousand eight hundred and sixty-three, (1863.)

HARTFORD, PROVIDENCE AND FISHKILL RAILROAD CO.,
By CALVIN DAY, *President.* [L. S.]

Signed, sealed, and delivered in presence of—
JOHN HOOKER.
T. C. PERKINS.

[Revenue stamp.]

65 STATE OF CONNECTICUT,
Hartford County, ss:

HARTFORD, *Aug.* 28, 1863.

Then personally appeared the Hartford, Providence, and Fishkill Railroad Company, by Calvin Day, president of said company, fully authorized signers and sealers of the above instrument, and acknowledged the same to be their free act and deed, before me.

THOMAS E. GRAVES,
Commissioner of the Superior Court.

[Revenue stamp.]

STATE OF CONNECTICUT,
Hartford County, ss:

HARTFORD, *Dec.* 3, 1863.

Then personally appeared the Hartford, Providence, and Fishkill Railroad Company, by Calvin Day, president of said company, fully authorized signers and sealers of the above instrument, and acknowledged the same to be their free act and deed, before me.

CHARLES E. PERKINS,
Justice of the Peace.

[Revenue stamp.]

66 EXHIBIT S.

STATE OF RHODE ISLAND,
In general assembly, January session, A. D. 1851.

An act authorizing the city of Providence to loan its credit in aid of the Providence and Plainfield Railroad and for its extension.

SECTION 1. The city of Providence is hereby authorized and empowered to purchase, take, receive, and hold the bonds to an amount not exceeding the sum of five hundred thousand dollars, bearing interest at the rate of seven per cent. per annum, which have been or may be issued by the Hartford, Providence and Fishkill Railroad Company, or which may be issued by the Providence and Plainfield Railroad Company, or such company as may be formed by the union of said companies according to the provisions of their several charters and the amendments

thereto. And said city is hereby authorized and empowered to issue in payment and for the purpose of providing money for the payment of said bonds, purchased as aforesaid, bonds, notes, scrip, or certificates of debt, bearing not more than six per cent. interest per annum, under the corporate name and seal of said city, in such form as may be found expedient, not exceeding the sum of five hundred thousand dollars. And said bonds, notes, scrip, or certificates of debt, shall be obligatory upon said city in the same manner and to the same extent as other debts lawfully contracted by said city; and the money derived from the
67 issue of such bonds shall be expended for the purpose of equipping and completing such portion of a line of railroad communication between Providence and Hartford, by way of Plainfield, and towards Willimantic, as the city council of said city of Providence shall determine.

SECT. 2. The interest which shall be collected by said city upon the bonds purchased by said city from said company or companies or united company, as aforesaid, shall be by said city applied, so far as the same shall be necessary, to the payment and satisfaction of the interest which may accrue upon the debt contracted by said city by authority hereof; and the balance of the interest received by said city shall be irrevocably pledged and appropriated for a sinking-fund for the payment and satisfaction of the bonds purchased by said city as aforesaid.

SECT. 3. The directors of the railroad company or companies from which the bonds may be purchased by the authority hereby given may, on the first Monday of June annually, nominate to the city council of the city of Providence, in convention, not exceeding six persons, citizens of and tax-payers in said city, from which the said council shall elect three trustees, who shall have charge of said sinking-fund, and to whom said city shall pay any surplus of interest appropriated and pledged as aforesaid; which trustees shall hold, manage, and invest the same in such manner as shall best conduce to the purpose of cancelling the indebtedness of said railroad company or companies to said city; and who shall always, when they have money to invest, purchase said city bonds or evidences of debt, issued by their authority, when the same can be obtained at their par value. And the said trustees may at all times institute and prosecute, in their own names, all suits in law or equity which, in the opinion of said trustees, may be necessary in the managing and conducting of said sinking-fund; and said trustees shall, before entering upon their duties, give bonds to the satisfaction of the mayor of said city and the president of said railroad company or
68 companies for the faithful discharge of the duties of their trust; and if, for the space of ten days, the said directors shall omit to nominate as aforesaid, or the president shall omit to approve as aforesaid, the city council may proceed to the election of trustees or to approval of their bonds; and all trustees shall continue in office until their successors are appointed and prepared to act.

SECT. 4. The authority given by this act to the city of Providence shall be exercised in the following manner, viz:

The city council of said city may, at any time within six months after the rising of this general assembly, call a meeting of the electors of said city authorized by the constitution of this State to vote in election of city council, or upon a proposition to impose a tax, or for the expenditure of money in said city; which meeting shall be notified by the city clerk for ten days in two newspapers published in said city, and shall continue open upon two days from noon until nine o'clock p. m. The board of aldermen of said city shall cause lists to be prepared in the same man-

ner as for the election of city officers, and tickets in proper form for voting for or against an issue of bonds under the authority of this act, and shall appoint three commissioners to preside over said meeting; and every elector, as aforesaid, shall be authorized to vote for or against such issue of bonds, by presenting to said commissioners his ticket or ballot, with his name indorsed thereon; and the ballots so given shall be sealed up, returned, and counted by the board of aldermen as votes for senator and representatives to the general assembly now are sealed up, returned, and counted; and if three-fifths of the electors voting shall vote in favor of issuing the bonds hereby authorized, the city council shall have full authority to direct their issue, and to manage all concerns and matters pertaining to and resulting from the issue of said bonds as fully as they are by the charter of said city authorized to manage the fiscal, prudential, and municipal affairs thereof; but if more than two-fifths of the electors so voting shall vote against such issuing of bonds, no further proceedings shall be had under the authority given by this act.

I certify the foregoing to be a true copy.

In testimony whereof I have hereto set my hand and affixed the seal of the State this twenty-second day of September, A. D. 1871.

[SEAL.] JOHN R. BARTLETT,
Secretary of State.

Fees, $3.00.

69 EXHIBIT T'.

An ordinance in relation to the loan of the credit of the city of Providence in aid of the Providence and Plainfield Railroad, and for its extension.

It is ordained by the city council of the city of Providence as follows:

SECTION 1. The city treasurer is hereby authorized and directed, by and with the advice of the board of aldermen, from time to time to purchase, take, receive, and hold the seven per cent. bonds which may be issued by the Hartford, Providence and Fishkill Railroad Company, to an amount not exceeding the sum of five hundred thousand dollars, ($500,000,) secured by a mortgage or mortgages of the railroad of said company in Connecticut and Rhode Island, or in either State, and in exchange or payment for said bonds, under the corporate name and seal of said city, to issue or cause to be issued and delivered to the said Hartford, Providence and Fishkill Railroad Company an equal amount of city bonds or certificates of debt of said city of Providence, in even sums of one thousand dollars ($1,000) each, bearing date at the time of issue, and made payable to said Hartford, Providence and Fishkill Railroad Company, or its assigns, at the end of twenty-five years from and after the first day of January, 1851, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of January and of July in each year, with interest-warrants annexed to each bond or certificate, for the several sums of interest to become due half yearly as aforesaid; and the certificate of the city clerk on the bonds or certificates of debt of said city, that the same have been by him registered, shall be conclusive evidence that the same have been issued by and with the advice of the board of aldermen.

70 SECT. 2. Said city bonds or certificates of debt shall be signed by the mayor and countersigned by the treasurer and registered by the city clerk, who shall certify such registry of each bond; and said interest-warrants shall be signed by the treasurer only; and the city

treasurer is hereby directed to receive the said seven per cent. railroad bonds as the same shall be from time to time offered by said railroad company, and to hold them for the city of Providence, subject to the provisions of the act authorizing said city to loan its credit as aforesaid; and in payment or exchange therefor said city treasurer shall from time to time deliver to said railroad company an equal amount of said city bonds or certificates of debt, until the full principal sum of five hundred thousand dollars ($500,000) shall have been so received and delivered or exchanged.

SECT. 3. Said city bonds or certificates of debt shall be numbered from one upwards to five hundred, consecutively, as they are issued, and be in the following form, viz:

No. . Providence city script $1,000. State of Rhode Island and Providence Plantations. Providence, 185 . This certifies that the city of Providence is indebted to the Hartford, Providence and Fishkill Railroad Company in the principal sum of one thousand dollars, payable to said company or its assigns at the end of twenty-five years from the first day of January, in the year one thousand eight hundred and fifty-one, with interest at the rate of six per cent. per annum, payable semi-annually, on delivery of the interest-warrants hereunto annexed, as they shall respectively become payable, until said principal sum is fully paid.

71 In testimony whereof, and pursuant to a three-fifths vote of the electors of the city of Providence, in a meeting duly warned and held for that purpose, and of the ordinance of the city counsel of said city, I, , mayor of said city, hereunto subscribe my name, and cause the seal of said city to be affixed. Dated at Providence, , 185 .

Mayor.

Countersigned by—
Treasurer.

No. interest-warrant for thirty dollars, $30. On the first day of , 18 , the city of Providence will owe and will pay to the Hartford, Providence and Fishkill Railroad Company, or bearer, thirty dollars, being for the half-yearly interest on city certificate No. , for one thousand dollars.

Treasurer.

SECT. 4. The provisions of the 2d and 3d sections of the act entitled "An act authorizing the city of Providence to loan its credit in aid of the Providence and Plainfield Railroad, and for its extension," passed by the general assembly of the State of Rhode Island at its January session, A. D. 1851, constituting a sinking-fund for the purpose of cancelling the bonds of said railroad company, issued to said city, and providing for trustees of said fund, are hereby agreed to and adopted; and it shall be the duty of the city treasurer, from time to time, immediately on receipt thereof, to pay over to the said trustees any and all moneys and balances of interest received by said city of Providence, and pledged or appropriated for a sinking-fund by the second and third sections of said act.

72 SECT. 5. Said seven per cent. bonds which may be purchased as aforesaid, with the interest therefor, and all moneys or other proceeds received on account of the same, are hereby irrevocably pledged and appropriated to pay the interest and principal sums of said city bonds

or certificates of debt, and the same shall not be applied to or used for any other purpose whatever.

SECT. 6. The said railroad company may contract to pay, and may pay, to any purchaser or holder of said city bonds or certificates of debt, with his assent, the principal sum or the interest thereof, or both, either when or before the same shall fall due; and for all principal sums or interest so paid said company, on surrender of such paid city bonds or interest-warrants to be cancelled, shall be allowed and receive therefor an equal amount of the seven per cent. bonds of said company theretofore purchased by said city. And whenever said city bonds and all interest thereon shall have been fully paid, either by means of said city sinking-fund or by other moneys or means furnished by or derived from said railroad company, and said city of Providence shall have been saved harmless, and indemnified from all payments and liabilities on said city bonds or certificates of debt and interest, then said seven per cent. bonds so purchased as aforesaid shall become the property of and be surrendered to said railroad company.

THE CITY OF PROVIDENCE,
City Clerk's Office, September 22, 1871.

This is to certify that the aforegoing is a true copy of an ordinance of the city council of the city of Providence, passed February 3, 1852.

Witness my hand and the seal of said city.

SAMUEL W. BROWN, [SEAL.]
City Clerk.

73 EXHIBIT U[1].

Record of mortgages from the Hartford, Providence and Fishkill Railroad Company to the city of Providence and to Benjamin Hoppin, Alexander Duncan, and Samuel Ames, trustees.

To all persons to whom these presents shall come, greeting:

Whereas the Hartford, Providence and Fishkill Railroad Company, which said company is formed by a union of the Hartford, Providence and Fishkill Railroad Company, a company legally incorporated by the State of Connecticut, and the Providence and Plainfield Railroad Company, a corporation legally incorporated by the general assembly of the State of Rhode Island and Providence Plantations, in pursuance of their charters and of the amendments thereto, and of the articles of union of the said companies, have completed the location of and are now engaged in building that portion of their railroad to commence in the city of Providence, or at such point on the railroad of the New York, Providence and Boston Railroad Company as may be agreed on with said company, and thence to the valley of the Pawtuxet River, and up the valley of the said river, on the south branch thereof, to the line of the State of Connecticut, at such point as may be deemed advisable, with power to build such lateral branches to said portion of their said railroad as they may deem expedient, and as they are authorized by their charter to build; and for the purpose of building and completing the said portion of their said railroad, with any branch or branches as aforesaid that may be deemed expedient, have received by subscription a capital stock of about fourteen hundred thousand dollars, and are desirous to borrow a sum of money not exceeding at any time one-half of the amount expended for the construction, materials, lands, and buildings of the said portion of their said railroad (with any branch or

branches as aforesaid) within the State of Rhode Island, and, in order to secure the payment of such loan, propose to make and issue certain bonds, bearing interest at seven per cent., as authorized by their charter, and payable in the city of Providence, with interest payable semi-annually, the total amount of said bonds at any time outstanding against said company and the date at which they are severally payable to be ascertained on application to the treasurer, at the office of said company, and which bonds are to be of the form next following, viz:

74 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

No. $

HARTFORD, PROVIDENCE AND FISHKILL RAILROAD COMPANY.

Mortgage and convertible bond.

The Hartford, Providence and Fishkill Railroad Company hereby acknowledge that they are indebted in the sum of dollars, for money borrowed, to Benjamin Hoppin, Alexander Duncan, and Samuel Ames, trustees, to be paid to or bearer, on the first day of January, A. D. 18 , with interest at the rate of seven per cent. per annum, payable half yearly on the first day of January and the first day of July in each year, at the city of Providence, on delivery of the annexed warrant therefor.

This bond is issued by virtue and under the authority of the provisions of the charter of said company, and is secured by a mortgage upon the railroad, real estate, and franchises of said company within the State of Rhode Island and Providence Plantations, executed to Benjamin Hoppin, Alexander Duncan, and Samuel Ames, as trustees for the holders of this and other bonds, which mortgage is dated the 24th day of September, A. D. 1852, and is recorded in the office of the secretary of state of the State of Rhode Island and Providence Plantations, according to the provisions of the charter of said company; and the amount of money borrowed on said bonds so secured is limited to one-half the amount expended by said company for the construction of the said railroad, its materials, lands, and buildings within the said State.

And the holders of this bond shall be entitled, at any time during the months of May and November in each year, to convert the principal sum into the capital stock of the company at par on surrendering this bond with the remaining interest-warrants hereunto attached.

Witness the corporate seal of the company this day of , in the year of our Lord one thousand eight hundred and fifty.

, *President.*

, *Secretary.*

Registered at the office of the company this day of , A. D. 185 .

Countersigned: , *Secretary.*

, *Treasurer.*

75 And whereas the directors of said company have power by their charters and the acts in amendment thereto and by their articles of union to mortgage the said portion of their said railroad so by them owned and to be constructed under their charters, with all the franchises, roads, and real estate of said company so owned and to be constructed

within the State of Rhode Island and Providence Plantatiens, and are desirous to mortgage the same within the chartered limits of said company between the City of Providence or such point on the railroad of the New York, Providence and Boston Railroad Company as may be agreed on with said company, and the line of the said State of Connecticut aforesaid to trustees to secure the payment of the money to be borrowed on said bonds:

Now, therefore, this indenture witnesseth, that the said Hartford, Providence and Fishkill Railroad Company, as well for and in consideration of the premises aforesaid, and for the better security of the person or persons, body or bodies corporate, who shall become holders of the said bonds, and of the payment of the same, with interest, as for and in consideration of one dollar, unto said company well and truly paid by Benjamin Hoppin, Alexander Duncan, and Samuel Ames, agreed upon as the trustees aforesaid, at and before the ensealing hereof, the receipt of which sum is hereby acknowledged, have granted, bargained, and sold, aliened, assigned, transferred, and set over unto the said Hoppin, Duncan, and Ames, their heirs and assigns, their survivors and the survivor of them, and their successors in said office of trustees, and their assigns, the said portion of their said railroad, with any branch or branches as aforesaid, so by them located and to be constructed under their charters and the acts in amendment thereto, and the articles of union aforesaid, meaning and intending hereby to convey all the franchises of the said company within the State of Rhode Island and Providence Plantations, and all the roads and real estate of the said company now owned by said company or hereafter to be acquired by them in the course of the location, building, and completing of the said portion of the said railroad, with any branch or branches as aforesaid, within the State of Rhode Island and Providence Plantations:

To have and to hold the said premises hereinbefore granted and assigned to them, the said Hoppin, Duncan, and Ames, their heirs and assigns, and their survivors and the survivor of them, and their successors in said trust, and their assigns:

In trust for the person or persons, body or bodies corporate, who shall become holder of said bonds or any of them about to be issued by said company as aforesaid, subject to the terms and stipulations of said bonds, and the provisions of said charters and the acts in amendment thereto, and the articles of union aforesaid, and subject to the possession, management, and control of the directors of said company so long as said company shall well and truly perform all and singular the stipulations of the bonds aforesaid and the covenants of this indenture.

And the said Hartford, Providence and Fishkill Railroad Company, and their successors and assigns, do hereby covenant with the said Hoppin, Duncan, and Ames, trustees as aforesaid, their heirs and assigns, and with their survivors and the survivor of them, and their successors in said trust, and their assigns, that until the ensealing and delivery hereof they are well seized and possessed of the above granted premises, and have full power to grant, assign, and convey the same free from all incumbrance. And the Hartford, Providence and Fishkill Railroad Company, for themselves, their successors, and assigns, do further covenant and agree with the said Hoppin, Duncan, and Ames, trustees as aforesaid, their heirs and assigns, and with their survivors and the survivor of them, and their successors in said trust, and their assigns, to warrant and defend the above granted and assigned premises from all demands and claims whatsoever. And the said

Hartford, Providence and Fishkill Railroad Company, for themselves, their successors and assigns, do further covenant and agree to and with the said Hoppin, Duncan, and Ames, trustees as aforesaid, their heirs and assigns, and with their survivors and the survivor of them, and their successors in said trust, and their assigns, to make, execute, and deliver all and singular such further assurances and instruments as shall, from time to time, be necessary, and the said trustees or their counsel learned in the law shall require, for the better effectuating the objects and purposes of this trust and mortgage, and placing the same upon the said portion of their said railroad so located and about to be built and completed within the State of Rhode Island and Providence Plantations, with the franchises, roads, and real estate aforesaid.

And the said Providence, Hartford and Fishkill Railroad Company, for themselves, their successors, and assigns, do further covenant and agree to and with the said Hoppin, Duncan, and Ames, trustees as aforesaid, their heirs and assigns, and with their survivors and the survivor of them, and their successors in said trust, and their assigns, that after thirty days' default to pay interest on any of said bonds, and upon request, in writing, of any of the holders of said bonds on which interest is not paid, the said trustees may and shall take actual possession of the said portion of the said railroad and of all and singular the property and effects herein conveyed and mortgaged, and through the agency of such persons as they may approve shall receive the income and profits of the said portion of the said railroad for the purposes of the trusts hereinbefore declared, defraying out of
77 the same the expenses of said portion of the said railroad and of its needful repairs.

And the said several trustees shall not in any way or manner be liable or responsible for any acts of each other to which they do not severally and jointly assent, and shall be accountable only for reasonable skill and judgment in the management of said trust.

And in case of any vacancy in said board of trustees by death, resignation, or otherwise, or the incapacity of any one of said trustees to act in the matter of said trust, the said Hartford, Providence and Fishkill Railroad Company, their successors and assigns, and the surviving trustee or trustees, shall select a new trustee or trustees to supply the vacancy or vacancies thereby created, and shall thereupon make, execute, and deliver all and singular such further instruments as may be necessary to vest in such new trustee and the continuing trustees the estate hereinbefore granted, and to enable the said trustees to execute the purposes of this trust.

This conveyance is upon the express limitation that upon the payment of the principal and interest of each and every of the said bonds and in the discharge of said Hartford, Providence and Fishkill Railroad Company from all liability therefrom, the estate and trust herein and hereby created shall cease and be null and void, and the said premises granted and conveyed hereby shall be divested from said trustees and immediately be re-invested in law and in fact in the said Hartford, Providence and Fishkill Railroad Company, their successors and assigns, without any entry or other act or declaration to be by said Hartford, Providence and Fishkill Railroad Company, their successors and assigns, or said trustees, made, done, or performed.

In testimony whereof the said Hartford, Providence and Fishkill Railroad Company have caused their corporate seal to be hereunto affixed, and the name of said company subscribed by their president, as agent specially authorized to do the same, this twenty-fourth day

of September, in the year of our Lord one thousand eight hundred and fifty-two.

HARTFORD, PROVIDENCE AND FISHKILL RAILROAD COMPANY,
(Signed) By JAMES M. BUNCE, *President.* [L. S.

Signed, sealed, and delivered in presence of—
SAMUEL A. BOWLER.
HENRY HOWARD.

78 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Providence, ss:

In Providence, this 24th day of September, A. D. 1852, then personally appeared the Hartford, Providence and Fishkill Railroad Company, by James M. Bunce, their president, as agent specially authorized to execute the foregoing instrument in their behalf, and acknowledged the same by the said James M. Bunce, in his said capacity, and under the authority aforesaid, to be the free act and deed of the said corporation.

Before me,

SAMUEL A. BOWLER,
Justice of the Peace.

And the said trustees, for themselves, their heirs, executors, and administrators, do hereby severally covenant with the said Hartford, Providence and Fishkill Railroad Company, their successors and assigns, that, upon their ceasing to be members of said board of trustees, they severally will, and their respective heirs, executors, and administrators shall, execute to the continuing trustees, and the new trustee appointed as aforesaid, such conveyance of their several estates and powers under and by virtue of this deed as shall vest in said new board of trustees all the estate and powers of the trustee ceasing to act in this trust.

BENJAMIN HOPPIN. [L. S.]

Witness to signature of Benjamin Hoppin, S. AYLWIN.

ALEXANDER DUNCAN,
By his attorney, C. H. DABNEY. [L. S.]

GEORGE A. LEETE, witness to signature of Alexander Duncan, by his attorney, C. H. Dabney.

SAMUEL AMES. [L. S.]

H. B. STAPLES, witness to the signature of Samuel Ames.

79 At a special meeting of the directors of the Hartford, Providence and Fishkill Railroad Company, held at the office of Wm. W. Hoppin, esq., in Providence, February 19, 1852:

Voted, unanimously, that the president be, and he hereby is, authorized to execute and acknowledge in behalf of this company a mortgage of the road, franchise, and real estate of this company, acquired and to be acquired, within this State of Rhode Island, to trustees designated by the city of Providence, to secure the bonds to be issued according to their charter within said State to an amount not exceeding at any time one-half the amount expended on and for said road, its franchise, and real estate, within said State of Rhode Island.

I certify the above vote to be a true copy of record, and in testimony whereof have hereunto set my hand and the seal of said company this fourteenth day of September, A. D. 1852.

[L. S.] (Signed) E. M. GOODRICH,
Secretary.

A true copy. Witness:

ASA POTTER, *Secretary of State.*

To all persons to whom these presents shall come, greeting:

Whereas the Hartford, Providence and Fishkill Railroad Company, which company is formed by a union of the Hartford, Providence and Fishkill Railroad Company, a corporation legally incorporated by the State of Connecticut, and the Providence and Plainfield Railroad Company, a corporation legally incorporated by the general assembly of the State of Rhode Island and Providence Plantations, in pursuance of their charters and the acts in amendment thereto and of the articles of union of said companies, have located and are now engaged in building that portion of their railroad to commence in the city of Providence, or at such point on the railroad of the New York, Providence and Boston Railroad Company as may be agreed on with said company, and thence to the valley of the Pawtuxet River, and up the valley of the Pawtuxet River, on the South Branch thereof, to the line of the State of Connecticut, at such point as may be deemed advisable, with power to build such lateral branches to said portion of
80 their said railroad as they may deem expedient, and as they are authorized by their charter to build, and for the purpose of building and completing their said railroad, with any branch or branches as aforesaid that may be deemed expedient, have received by subscription a capital stock of about fourteen hundred thousand dollars, and are desirous to borrow a sum of money as well on that portion of their railroad above described as on that portion of their railroad lying within the State of Connecticut, not exceeding at any time one-half the amount expended for the construction and equipment of the whole of their said railroad, with the branches thereof.

And in order to secure the payment of such loan, propose to make and issue to the city of Providence certain bonds, bearing interest at seven per cent. per annum, and secured by mortgage on their railroad in Connecticut, as authorized by their charter, with interest payable semi-annually, the total amount of said bonds at any time outstanding against said company, and the date at which they are severally payable, to be ascertained on application to the treasurer, at the office of said company, and which bonds are to be of the form next following, viz:

STATE OF CONNECTICUT.

No. $

The Hartford, Providence & Fishkill Railroad Company hereby acknowledge that they are indebted in the sum of dollars for money borrowed to Thomas S. Williams, William H. Imlay, and D. F. Robinson, trustees, to be paid to or bearer on the 1st day of January, A. D. 18 , with interest at the rate of seven per cent. per annum, payable half-yearly, on the 1st day of January and the 1st day of July in each year, at the office of said company in Hartford, on delivery of the annexed warrant therefor.

This bond is issued in pursuance of and under a provision of the charter that the amount of money borrowed on and issue of the bonds of said company shall at no time exceed one-half of the amount expended for the construction and equipment of their railroad, and is secured by a mortgage of said railroad, together with the franchises and chartered rights of the company between the east and west line of the State of Connecticut, to Thomas S. Williams, William H. Imlay and D. F. Robinson, as trustees for the holders of said bonds, which mort-
81 gage is dated the 25th day of August, A. D. 1849, and recorded in the office of the secretary of the State of Connecticut, according to the provisions of the charter of said company.

And the holder of this bond shall be entitled at any time during the months of May and November in each year to convert the principal sum into the capital stock of the company at par on surrendering this bond, with the remaining interest-warrants hereunto attached.

Witness the corporate seal of the company this day of , in the year of our Lord one thousand eight hundred and fifty.

President.

Secretary.

Registered at the office of the company this day of , 185 .

Secretary.

Countersigned.

Treasurer.

And whereas the directors of said company have power by their charters and the acts in amendment thereto, and by their articles of union, to mortgage their said railroad so by them owned and to be constructed under their charters, with all the franchises, roads, and real estate of said company so owned and to be built and constructed, as well within the State of Rhode Island and Providence Plantations as within the State of Connecticut;

And whereas the said Hartford, Providence and Fishkill Railroad Company have already mortgaged that portion of the railroad so by them owned, constructed, and to be constructed within the State of Connecticut to Thomas S. Williams, William H. Imlay, and D. F. Robinson, as trustees, for the benefit of the holders of the bonds hereinbefore described, by a deed dated the 25th day of August, in the year of our Lord one thousand eight hundred and forty-nine, and recorded in the office of the secretary of state of Connecticut;

And whereas the said Hartford, Providence and Fishkill Railroad Company have already mortgaged that portion of their said railroad so by them owned and to be constructed within the State of Rhode Island and Providence Plantations to Benjamin Hoppin, Alexander Duncan, and Samuel Ames, as trustees, for the benefit of the holders of certain bonds therein named, by a deed dated the 24th day of September, in the year of our Lord one thousand eight hundred and fifty-two, and recorded in the office of the secretary of state of Rhode Island and Providence Plantations;

82

And whereas the said Hartford, Providence and Fishkill Railroad Company have agreed with the city of Providence to execute and deliver to the same trustees named in their Rhode Island mortgage last above described a second mortgage of their railroad and real estate in Rhode Island for the benefit of the city of Providence as further security for such and so many of the bonds of said company issued under their Connecticut mortgage hereinbefore described as shall, from time to time, be taken by said city in exchange for bonds of said city;

And whereas, in pursuance of the powers granted in their charters and of said agreement with the city of Providence, the said Hartford, Providence and Fishkill Railroad Company are desirous to execute a second mortgage of their railroad and real estate in Rhode Island to the said trustees, for the benefit of said city of Providence as further security for such and so many of the bonds of said company issued under

their Connecticut mortgage and thereinbefore described as may be taken by said city in exchange for the bonds of said city:

Now, therefore, this indenture witnesseth, that the said Hartford, Providence and Fishkill Railroad Company, as well for and in consideration of the premises aforesaid, and for the benefit and further security of the city of Providence, and of the payment of such and so many of the bonds of said company issued under their Connecticut mortgage and hereinbefore described as may be taken by the city of Providence in exchange for the bonds of said city, with interest, and also for and in consideration of one dollar unto said company well and truly paid by Benjamin Hoppin, Alexander Duncan, and Samuel Ames, agreed upon as the trustees as aforesaid, at and before the ensealing hereof, the receipt of which sum is hereby acknowledged, have granted, bargained, and sold, aliened, assigned, transferred, and set over to the said Hoppin, Duncan, and Ames, their heirs and assigns, and their survivors and the survivor of them, and their successors in said office of trustees and their assigns, the said portion of their said railroad, with any branches or branch as aforesaid, so by them owned, located, and to be constructed under their charters and the acts in amendment thereto, and the articles of union aforesaid, meaning and intending hereby to convey all the franchises of said company within the State of Rhode Island and Providence Plantations, and all the roads and real estate of said com-
83 pany now owned by said company, or hereafter to be acquired by them in the course of the location, building, and completing of the said portion of their said railroad, with the branch or branches aforesaid, within the State of Rhode Island and Providence Plantations:

To have and to hold the said premises hereinbefore granted and assigned unto them, the said Hoppin, Duncan, and Ames, their heirs and assigns, and their survivors and the survivor of them, and their successors in said trust and their assigns:

In trust for the benefit of the city of Providence, and to secure the payment of such and so many of the bonds of said company issued under their Connecticut mortgage aforesaid, and hereinbefore described, as may be taken by the said city of Providence in exchange for the bonds of said city, subject to the terms and stipulations of the said bonds of said company, and the provisions of their charters and the acts in amendment thereto, and the articles of union aforesaid, and subject to the possession, management, and control of the directors of said company so long as said company shall well and truly perform all and singular the stipulations of the bonds issued by said company under their Connecticut mortgage aforesaid, and hereinbefore described, and taken by the said city of Providence in exchange for the bonds of said city, and the covenants of this indenture.

And the said Hartford, Providence and Fishkill Railroad Company for themselves, their successors, and assigns, do hereby covenant with the said Hoppin, Duncan, and Ames, trustees as aforesaid, and with their heirs and assigns, and with their survivors and the survivor of them, and their successors in said trust, and their assigns, that until the ensealing and delivery hereof they are well seized and possessed of the above granted premises, and have full power to grant and convey the same free from all incumbrance, saving and excepting, and meaning to make this mortgage second and subject to the mortgage hereinbefore described, executed and delivered to the said Hoppin, Duncan, and Ames, trustees for the benefit of the holders of certain bonds of the said company therein described, which mortgage is dated the twenty-

fourth day of September, in the year of our Lord one thousand eight hundred and fifty-two, and recorded in the office of the secretary of state of Rhode Island and Providence Plantations.

And the said Hartford, Providence and Fishkill Railroad Company, for themselves, their successors, and assigns, do further covenant and agree to and with the said Hoppin, Duncan, and Ames, trustees as aforesaid, and with their heirs and assigns, and with their survivors and the survivor of them, and their successors in said trust, and
84 their assigns, to warrant and defend the above granted and assigned premises from all demands and claims whatever, saving and excepting the mortgage hereinbefore last described.

And the said Hartford, Providence and Fishkill Railroad Company, for themselves, their successors, and assigns, do further covenant and agree to and with the said Hoppin, Duncan and Ames, trustees as aforesaid, and with their heirs and assigns, and with their survivors and the survivor of them, and their successors in said trust, and their assigns, to make, execute and deliver all and singular such further assurances and instruments as shall from time to time be necessary, and the said trustees or their counsel learned in the law shall require for the better effectuating of the objects and purposes of this trust and mortgage, and placing the same upon the said portion of their said railroad with any branch or branches as aforesaid, so located, and about to be built and completed within the State of Rhode Island, with the franchises, roads, and real estate aforesaid.

And it is hereby further covenanted and agreed by the said Hartford, Providence and Fishkill Raiload Company, for themselves, their successors, and assigns, to and with the said Hoppin, Duncan and Ames, trustees as aforesaid, and with their heirs and assigns, and with their survivors and the survivor of them, and their successor in said trust, and their assigns, that after thirty days' default to pay interest on any of the said bonds of the said company issued under their Connecticut mortgage aforesaid, and hereinbefore described, and taken by the said city of Providence in exchange for the bonds of said city, and upon request in writing of any of the holders of any of the said bonds of said company so taken by said city of Providence, and on which interest is not paid, the said trustees may and shall take actual possession of the said portion of their said railroad, and of all and singular the property and effects herein and hereby conveyed and mortgaged, and through the agency of such person or persons as they may approve shall receive the income and profits of the said portion of their said railroad for the purpose of the trust hereinbefore declared, defraying out of the same the expenses of said railroad and its needful repairs.

And the said several trustees shall not in any way or manner be liable or responsible for any acts of each other to which they do not severally and jointly assent, and shall be answerable only for the exercise of reasonable skill and judgment in the management of said trust.

And in case of any vacancy in said board of trustees by death, resignation, or otherwise, or the incapacity of any one of said trustees
85 to act in the matter of said trust, the said Hartford, Providence and Fishkill Railroad Company, their successors and assigns, and the surviving trustee or trustees, shall select a new trustee or trustees to supply the vacancy or vacancies thereby created, and shall thereupon make, execute, and deliver all and singular such further instruments as may be necessary to vest in such new trustee and the continuing trustees the estate hereinbefore granted, and to enable the said trustees to execute the purposes of this trust.

This conveyance is upon the express limitation that upon payment of the principal and interest of each and every of such and so many of the bonds of the said Hartford, Providence and Fishkill Railroad Company issued under their Connecticut mortgage aforesaid, and hereinbefore described, as shall be taken by the said city of Providence in exchange for the bonds of said city, and the discharge of said company from all liability therefrom, the estate and trust herein and hereby created shall cease and be null and void, and the said premises granted and conveyed hereby shall be divested from said trustees and immediately be re-invested in law and in fact in the said Hartford, Providence and Fishkill Railroad Company, their successors and assigns, without any entry or other act or declaration to be by said company or the said trustees done or performed.

In testimony whereof the said Hartford, Providence and Fishkill Railroad Company have caused their corporate seal to be hereunto affixed, and the name of said company subscribed by their president, as agent, specially authorized to do the same, this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and fifty-two.

HARTFORD, PROVIDENCE AND FISHKILL RAILROAD COMPANY,
By JAMES M. BUNCE, *President.* [L. S.]

Signed, sealed, and delivered in presence of—
SAMUEL A. BOWLER.
HENRY HOWARD.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Providence, ss:

In Providence, this twenty-fourth day of September, A. D. 1852, then personally appeared the Hartford, Providence and Fishkill Railroad Company, by James M. Bunce, their president, as agent specially authorized to execute the foregoing instrument in their behalf, and acknowledged the same by the said James M. Bunce in his said
86 capacity, and under the authority aforesaid, to be the free act and deed of said corporation. Before me,

SAMUEL A. BOWLER,
Justice of the Peace.

And the said trustees, for themselves, their heirs, executors, and administrators, do hereby severally covenant with the said Hartford, Providence and Fishkill Railroad Company, their successors and assigns, that upon their ceasing to be members of said board of trustees, they severally will, and their respective heirs, executors, and administrators shall execute to the continuing trustees and the new trustee appointed as aforesaid such conveyance of their several estates and powers under and by virtue of this deed as shall vest in said new board of trustees all the estate and powers of the trustee ceasing to act in this trust.

BENJAMIN HOPPIN. [L. S.]

Witness to signature of Benjamin Hoppin, SUSANNA AYLWIN.

ALEX'R DUNCAN.
By his att'y, C. H. DABNEY. [L. S.]

GEORGE A. LEETE, witness to signature of Alex. Duncan, by his att'y, C. H. Dabney.

SAMUEL AMES. [L. S.]

H. B. STAPLES, witness to signature of Samuel Ames.

87 At a special meeting of the directors of the Hartford, Providence and Fishkill Railroad Company, held at the office of W. W. Hoppin, esq., in Providence, February 19, 1852:

Voted, unanimously, that the president be, and he is hereby, authorized to execute and acknowledge in behalf of this company a second mortgage of the road, franchise, and real estate of the company within the State of Rhode Island to the same trustees named by the city council aforesaid, as additional and collateral security to the city of Providence for such bonds of the said Hartford, Providence and Fishkill Railroad Company, secured by the mortgage of the road in Connecticut, as may be taken by said city of Providence in exchange for an equal amount of the bonds of said city.

I certify the above vote to be a true copy of record, and in testimony whereof have here hereunto set my hand, and the seal of said company, this 14th day of September, A. D. 1852.

E. M. GOODRICH,
Secretary.

True copy. Witness:
[L. S.] ASA POTTER,
Sec. of State.

To all people to whom these presents shall come, greeting:

Whereas, the Hartford, Providence and Fishkill Railroad Company, on the twenty-fourth day of September, A. D. 1852, made and executed two certain mortgages upon certain property set forth and described in said mortgage deeds, which are recorded in the office of the secretary of the State of Rhode Island, to Benjamin Hoppin, Alexander Duncan, and Samuel Ames, their heirs and assigns, and the survivors or survivor of them, and their successors in said trust, and their assigns, to secure the payment of certain bonds therein respectively described, to be issued by said company; and whereas a portion of said bonds of the said railroad company have been exchanged for the bonds of said city of Providence; and whereas an indenture was made and executed on the sixteenth day of November, A. D. 1853, between the Hartford, Providence and Fishkill Railroad Company of the first part, and the city of Providence of the second part, and the said Benjamin Hoppin, Alexander Duncan,
88 and Samuel Ames of the third part, and Ezek Aldrich, city treasurer of the city of Providence, of the fourth part, wherein and whereby the said Ezek Aldrich, city treasurer as aforesaid, and his successor in the said office of city treasurer of the city of Providence, became associated with the said Hoppin, Duncan, and Ames as one of the mortgagees in trust under said mortgages, and wherein and whereby it was provided that in the case of any vacancy in said board of trustees the city council of said city of Providence shall have the sole power to fill such vacancy; and whereas it was the intention of the parties to the said mortgages that the same should cover all their railroad and the branches thereof located and to be located, built and to be built, and all their real estate, franchises, and buildings owned or to be owned by said company in the State of Rhode Island, whether the said buildings were upon the land located or purchased, or otherwise either owned or occupied by the said railroad company:

Now, therefore, this indenture witnesseth, that the said Hartford, Providence and Fishkill Railroad Company, as well for and in consideration of the premises aforesaid, and for the better security of the said bonds, and of the payment of the same with interest, as for and in consideration of one dollar unto said company well and truly

paid by Benjamin Hoppin, Alexander Duncan, and Samuel Ames, and Ezek Aldrich, city treasurer of the city of Providence agreed upon as the trustees aforesaid, at and before the ensealing hereof, the receipt of which sum is hereby acknowledged, have granted, bargained, and sold, aliened, assigned, transferred, and set over unto the said Hoppin, Duncan, Ames, and Aldrich, city treasurer as aforesaid, their heirs and assigns, and the successors of said Aldrich in the said office of city treasurer, their survivor and the survivors of them, and their successors in said office of trustees, and their assigns, all that portion of their railroad and the branches thereof located and to be located, built and to be built, and all their real estate, franchises, and buildings owned and to be owned by said company in the State of Rhode Island, with all the privileges and appurtenances thereof, whether said road and buildings are or will be upon land located, purchased, or otherwise either owned or occupied by the railroad company:

To have and to hold the said premises hereinbefore granted and assigned to them, the said Hoppin, Duncan, Ames, and Aldrich, city treasurer of the said city of Providence, their heirs and assigns, and the successors of said Aldrich in said office of city treasurer, and their survivors and the survivor of them, and their successors in said
89 trust and their assigns, in trust for the person or persons, body or bodies corporate, who are or who shall become holders of said bonds or any of them issued or about to be issued by said company as aforesaid, and to secure the payment thereof subject to the terms and stipulations of said bonds, and the provisions of their charters and the acts in amendment thereto, and their articles of union, and subject to the possession, management, and control of the directors of said company so long as said company shall well and truly perform all and singular the stipulations of the bonds aforesaid and the covenants of this indenture.

And the said Hartford, Providence and Fishkill Railroad Company, and their successors and assigns, hereby covenant with the said Hoppin, Duncan, Ames, and Aldrich, city treasurer as aforesaid, their heirs and assigns, and the successors of said Aldrich in said office of city treasurer, and with their successors and the survivors of them, and their successors in said trust, and their assigns, that until the ensealing and delivery hereof they are well seized and possessed of the above-granted premises, and have full power to grant, assign, and convey the same free from all incumbrances except the mortgages hereinbefore described.

And the Hartford, Providence and Fishkill Railroad Company, for themselves, their successors, and assigns, do further covenant and agree with the said Hoppin, Duncan, Ames, and Aldrich, city treasurer as aforesaid, their heirs and assigns, and the successors of the said Aldrich in said office of city treasurer, and their survivors and the survivor of them, and their successor in said trust, and their assigns, to warrant and defend the above-granted and assigned premises from all demands and claims whatsoever.

And the said Hartford, Providence and Fishkill Railroad Company, for themselves, their successors, and assigns, do further covenant and agree to and with the said Hoppin, Duncan, Ames, and Aldrich, city treasurer as aforesaid, their heirs and assigns, and the successors of said Aldrich in said office of city treasurer, and with the survivors and the survivor of them, and their successors in said trust, and their assigns, to make, execute, and deliver all and singular such further assurances and instruments as shall from time to time be necessary, and the said trustees or their counsel learned in law shall require for the better et-

fectuating the objects and purposes of this trust and mortgage, and placing the same upon the said portion of their said railroad, so located and to be located and to be built and completed within the State of Rhode Island and Providence Plantations, with the franchise, roads, and real estate and buildings aforesaid.

90 And the said Hartford, Providence and Fishkill Railroad Company, for themselves, their successors, and assigns, do further covenant and agree to and with the said Hoppin, Duncan, Ames, and Aldrich, city treasurer as aforesaid, trustees as aforesaid, their heirs and assigns, and the successors of said Aldrich in said office of city treasurer, and with their survivors and the survivor of them, and their successors in said trust, and their assigns, that after thirty days' default to pay interest on any of said bonds, and upon request in writing of any of the holders of said bonds on which interest is not paid, the said trustees may and shall take actual possession of the aforesaid portion of said railroad and all and singular the property and effects herein and hereby conveyed and mortgaged, and, through the agency of such persons as they may approve, shall receive the income and profits of said railroad above granted for the purposes of the trusts hereinbefore declared, defraying out of the same the expenses of said portion of the said railroad above granted and of its needful repairs.

And the said several trustees shall not in any way or manner be liable or responsible for any acts of each other to which they do not severally and jointly assent, and shall be accountable only for reasonable skill and judgment in the management of the said trust.

And in case of any vacancy in said board of trustees, by death, resignation, or otherwise, or incapacity of any one of the said trustees to act in the matter of said trust, the said city of Providence, by vote of the city council, shall have the sole power of appointing any person or persons to fill such vacancy or vacancies thereby created, and the said Hartford, Providence and Fishkill Railroad Company shall thereupon make, execute, and deliver all and singular such further instruments as may be necessary to vest in such new trustee and the continuing trustees the estate hereinbefore granted, and to enable the said trustees to execute the purposes of this trust.

This conveyance is upon the express limitation that upon the payment of the principal and interest of each and every of said bonds, and the discharge of said Hartford, Providence and Fishkill Company from all liability therefrom, the estate and trust herein and hereby created shall cease and be null and void, and the said premises granted and conveyed hereby shall be divested from said trustees, and immediately be reinvested in law and in fact in the said Hartford, Providence and Fishkill Railroad Company, their successors and assigns, without any entry or other act or declaration to be by said Hartford, Providence and Fishkill Railroad Company, their successors and assigns, or said trustees, made, done, or performed.

91 In testimony whereof the said Hartford, Providence and Fishkill Railroad Company have caused their corporate seal to be hereunto affixed, and the name of said company subscribed by their president, as agent specially authorized to do the same, this twelfth day of April, in the year of our Lord one thousand eight hundred and fifty-four.

HARTFORD, PROVIDENCE AND FISHKILL RAILROAD COMPANY,
By JAMES M. BUNCE, *President.* [L. S.

Signed, sealed, and delivered in presence of—
PAYNES L. PORTER.
J. HAMMOND TRUMBULL.

STATE OF CONNECTICUT,
Hartford County, ss:

HARTFORD, *April* 12, 1854.

Then and there personally appeared James M. Bunce, president and agent of the Hartford, Providence and Fishkill Railroad Company, and acknowledged the foregoing instrument to be their free act and deed of said company, and also his free act and deed as agent of said company thereunto authorized, before me.

J. HAMMOND TRUMBULL,
Notary Public.

And the trustees, for themselves, their heirs, executors, and administrators, do hereby severally covenant with the said Hartford, Providence and Fishkill Railroad Company, their successors and assigns, that upon their ceasing to be members of said board of trustees they severally will, and their respective heirs, executors, and administrators shall execute to their continuing trustees and the new trustee appointed as aforesaid, such conveyance of the several estate and power under and by virtue of this deed as shall vest in said new board of trustees all the estate and powers of the trustee ceasing to act in this trust.

BENJAMIN HOPPIN. [L. S.]
ALEXANDER DUNCAN,
By his attorney, C. H. DABNEY. [L. S.]
SAMUEL AMES. [L. S.]
EZEK ALDRICH, [L. S.]
City Treasurer.

I certify that at a stated meeting of the directors of the Hartford, Providence and Fishkill Railroad Company, held at Hartford on the 12th day of April, A. D. 1854, the above mortgage being sub-
92 mitted for their consideration, it was unanimously voted that the same is approved, and that the president of this company be, and he is hereby, authorized to execute and acknowledge, in behalf of said company, a mortgage of all their railroad and the branches thereof, located and to be located, built and to be built, and all their real estate, franchises and buildings owned and to be owned by said company in the State of Rhode Island, whether the said buildings are or may be upon land located, purchased, or otherwise, either owned or occupied by said company, to trustees designated by the city council of the city of Providence to secure the bonds described in the above mortgage.

In testimony whereof I have hereunto set my hand and the seal of the company aforesaid this twelfth day of April, A. D. 1854.

[SEAL OF CO.] (Signed) J. H. TRUMBULL,
Secretary of H., P. and F. Railroad Company.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

SECRETARY'S OFFICE,
Providence, January 8, 1855.

I hereby certify that the above is a true copy of a mortgage from the Hartford, Providence and Fishkill Railroad Company to Benjamin Hoppin, Alexander Duncan, Samuel Ames, and Ezek Aldrich, treasurer, as trustees, for the payment of certain bonds, etc.

In witness whereof I have hereunto set my hand and the seal of the State at Providence, this 8th day of January, A. D. 1855.

[L. S.] (Signed) WM. R. WATSON,
Secretary of State.

I certify that the foregoing papers are true copies of the two mortgages from the Hartford, Providence and Fishkill Railroad Company as appears by the copies on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the State this seventh day of January, A. D. 1858.

[L. S.] JOHN R. BARTLETT,
Secretary of State.

93 EXHIBIT V'

Copy of mortgage H., P. & F. R. R. Company of its Connecticut property to Thomas S. Williams, William H. Imlay, D. F. Robinson, trustees, August 25, 1849.

[Coat of arms.]

STATE OF CONNECTICUT,
Office Secretary of State.

HARTFORD, PROVIDENCE AND FISHKILL RAILROAD COMPANY.

To all persons to whom these presents shall come, greeting:

Whereas the Hartford, Providence and Fishkill Railroad Company, in pursuance of the powers conferred by their charter and the amendments thereto, are now engaged in building their railroad between the east and west line of this State, in the direction of Providence and Fishkill, and for that purpose have raised by subscription a capital of nine hundred thousand dollars, and are desirous to borrow a sum of money, not exceeding at any time one-half of the amount expended for the construction and equipment of their railraod, and to be expended in constructing, equipping, and completing the same, and, in order to secure the payment of such loan, propose to make and issue certain bonds, bearing interest at the rate of seven per cent., as authorized by their charter, and payable in Hartford, with interest payable semi-annually, the total amount of which bonds at any time outstanding against said company, and the dates at which they are severally payable, may be ascertained on application to the treasurer, at the office of said company, and which bonds are to be of the form next following, viz:

STATE OF CONNECTICUT.

No. $1,000.

HARTFORD, PROVIDENCE AND FISHKILL RAILROAD COMPANY.

Mortgage and convertible bond.

The Hartford, Providence and Fishkill Railroad Company hereby acknowledge that they are indebted in the sum of dollars for money borrowed to Thomas S. Williams, William H. Imlay, and D. F. Robinson, trustees, to be paid to or bearer on the first day of January, A. D. 18 , with interest at the rate of seven per cent. per annum, payable half yearly, on the first day of January and the first day of July in each year, at the office of said company in Hartford, on delivery of the annexed warrant therefor.

This bond is issued in pursuance of and under a provision of the char-

ter, that the amount of money borrowed on an issue of the bonds of said company shall at no time exceed one-half of the amount expended for the construction and equipment of their railroad, and is secured
94 by a mortgage of said railroad, together with the franchises and chartered rights of the company, between the east and west line of the State of Connecticut, to Thomas S. Williams, William H. Imlay, and D. F. Robinson, as trustees, for the holders of said bonds, which mortgage is dated the twenty-fifth day of August, A. D. 1849, and recorded in the office of the secretary of the State of Connecticut, according to the provisions of the charter of said company.

And the holder of this bond shall be entitled at any time during the months of May and November in each year to convert the principal sum into the capital stock of the company at par, on surrendering this bond, with the remaining interest-warrants hereunto annexed.

Witness the corporate seal of the company this first day of January, in the year of our Lord one thousand eight hundred and fifty.

President.

Secretary.

Countersigned.

Treasurer.

And whereas said company have located their said railroad between a point in the town of Windham and a point in the town of Bristol, and have procured the right of roadway and the necessary lands for nearly the whole distance between Windham and Bristol, and are now procuring the same for the remainder of said distance, and have placed the whole of the graduation, masonry, and bridges on said line between Windham and Bristol under contract, and bought the iron for the same, and contemplate the completion and equipment of said road between Windham and Bristol on or before the first day of November, A. D. 1849;

And whereas the directors of said railroad company have power, by an amendment of their charter passed by the general assembly at its May session, A. D. 1848, to mortgage the said railroad by them owned or constructed or to be constructed under their charter, or any portion or portions of the same, with the personal estate and other property, franchises, and chartered rights of said company, and are desirous to mortgage the same within the chartered limits of said company, between the east and west line of this State, to trustees, to secure the money to be borrowed on said bonds, and said railroad as at present located, constructed, and being constructed, passes through or is situated in the towns of Windham, Columbia, Coventry, Andover, Bolton, Vernon, Manchester, East Hartford, Hartford, Weathersfield, Berlin, Farmington, and Bristol:

95 Now, therefore, this indenture witnesseth, that the said Hartford, Providence and Fishkill Railroad Company, as well for and in consideration of the premises aforesaid, and for the better security of the persons who shall become holders of the said bonds, and the payment of the same with interest, as also for and in consideration of one dollar unto said company well and truly paid by Thomas S. Williams, William H. Imlay, and D. F. Robinson, as said trustees, at or before the ensealing and delivery hereof, the receipt of which said sum is hereby acknowledged, have granted, bargained, and sold, aliened, assigned, transferred, and set over, and by these presents do grant, bargain, and sell, alien*e*, assign, transfer, and set over to the said Thomas S. Williams, William H. Imlay, and D. F. Robinson, and their survivors and the sur-

vivor of them, and their successors in said office of trustees, the said railroad or roads, with any branch or branches by them owned or constructed or to be constructed under their charter between the east and west line of this State, together with all and singular the railways, rails, bridges, fences, materials, privileges, appendages, appurtenances, implements, cars, engines, and personal estate used, occupied, and improved for railways, depots, or stations, with the lands and buildings in any way appertaining to and necessary for the proper construction, operation, and security of said railroad, and all the franchises and chartered rights of said company; always excepting from this mortgage the dwelling-houses, buildings, and building-lots owned or which may hereafter be owned, possessed, or taken by said company, and which are not necessary for the uses and operation of their railroad, as above expressed; and also such depots, buildings, and lands owned, possessed, taken, or which may hereafter be taken in the town of Hartford, between Albany street on the north and Broad street on the south, as lie southeasterly of the line which has been fixed upon as the final division-line of use, occupation, and ownership between the Hartford and Providence Railroad Company, now the Hartford, Providence and Fishkill Railroad Company, and the Hartford and New Haven Railroad Company, by agreement of said companies, and as shown on a map marked "Map A, referred to by engineers of H. & P. and H. & N. H. Rd. Cos., Feb'y 23, 1849," in the office of said H., P. & F. R. R. Co., and which line runs longitudinally through the centre of the new depot now building on Asylum street, and continuously (though curving) through the grounds of Julius Catlin, and lands late of Abigail Williams, southerly from said depot; which said property so excepted is to remain free from any incumbrance:

96 To have and to hold the said premises hereinbefore granted and assigned to them, the said Thomas S. Williams, William H. Imlay, and D. F. Robinson, and the survivors and survivor of them, and their heirs and successors in said office of trustees, in trust for the person or persons, bodies politic or corporate, who shall become holders of the said bonds or any of them about to be issued by the said company as aforesaid, subject to the terms and stipulations of the said bonds and the provisions of the said charter under which said company derives its power, and subject to the possession, control, and management of the directors of said company so long as said company shall well and truly perform all and singular the stipulations of the bonds aforesaid and the covenants of this indenture.

And the said company, for themselves and their successors and assigns, do hereby covenant with the said trustees, their successors and assigns, that until the ensealing and delivery hereof they are well seized and possessed of the above granted premises, and have full power to grant, assign, and convey the same in manner aforesaid, and that the same are free from all incumbrance, except a mortgage by the Hartford and Providence Railroad Company to Thomas S. Williams, William H. Imlay, and D. F. Robinson, all of Hartford, as trustees, bearing date the 30th day of January, one thousand eight hundred and forty-nine; which mortgage is in force and operation upon the said railroad of said grantors between Hartford and Willimantic only, and is security for the sum of seventy-eight thousand seven hundred and thirty (78,730) dollars and interest thereon at seven per cent. per annum, from the first day of July now last passed.

And the said grantors, for themselves, their successors, and assigns, hereby covenant with the said trustees, and their survivors and the

survivor of them, and their successors in said office of trustees, to warrant and defend the above-granted and assigned premises from all claims and demands whatsoever.

And the said grantors further covenant and agree with said trustees, their successors and assigns, to make, execute, and deliver all and singular such further assurances and instruments as shall, from time to time, be necessary, and the said trustees or their counsel learned in the law shall reasonably advise and require for the better effectuating of the objects and purposes of this trust and mortgage, and placing the same upon said railroad, and the property and effects which shall appertain to the same.

And it is hereby covenanted and agreed between said grantors and trustees, that after thirty days' default to pay interest on any of
97 said bonds, and upon request in writing of any one of the holders of said bonds on which interest is not paid, said trustees may and shall take actual possession of the said railroad and of all and singular the property and effects hereby conveyed and mortgaged, and through the agency of the persons they may approve shall receive the income and profits of said railroad, for the purposes of the trusts hereinbefore declared, defraying out of the sum the expenses of the road and its needful repairs.

And the said several trustees shall not, in any manner, be liable or responsible for any acts of each other to which they do not severally and jointly assent, and shall be accountable only for the exercise of reasonable skill and judgment in the management of said trust.

And in case of any vacancy in said board of trustees, by death, resignation or otherwise, or the incapacity of any one of said trustees to act in the matter of said trust, the grantors and the surviving trustees shall elect a new trustee to supply the vacancy thereby created, and shall thereupon make, execute, and deliver all and singular such further instruments and assurances as may be requisite to enable the trustees thus designated to execute the purposes of this trust.

This conveyance is upon the express limitation that upon the payment of the principal and interest of each and every of said bonds, and the discharge of said company from all liability thereupon, the estate and trust herein and hereby created in said trustees shall cease and be null and void, and the premises granted and conveyed hereby shall be divested from said trustees, and immediately be re-invested in law and in fact in the said grantors, without any entry or other act or declaration to be by said grantors or said trustees made or performed.

In testimony whereof the said Hartford, Providence and Fishkill Railroad Company have caused their corporate seal to be hereunto affixed, and the name of said company subscribed by their president, as agent specially authorized to do the same, this twenty-fifth day of August, A. D. 1849.

THE HARTFORD, PROVIDENCE AND FISHKILL RAILROAD COMPANY,
By JOSEPH TRUMBULL. [SEAL.]

Signed, sealed, and delivered in presence of—
OLIVER E. WILLIAMS.
ELIZUR GOODRICH.

98 STATE OF CONNECTICUT,
Hartford County, ss :

HARTFORD, *September* 5, A. D. 1849.

Then and there personally appeared Joseph Trumbull, president and agent of the Hartford, Providence and Fishkill Railroad Company, and

acknowledged the foregoing instrument to be the free act and deed of said company, and also his free act and deed as agent of said company, thereunto authorized. Before me,

OLIVER E. WILLIAMS,
Justice of the Peace.

Received for record September 7, 1849.

ROGER H. MILLS,
Sec'y of State.

STATE OF CONNECTICUT, *ss:*

OFFICE OF SECRETARY OF STATE.

I hereby certify that the foregoing is a true copy of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said State at Hartford this 22d day of September, A. D. 1871.

[SEAL.] HIRAM APPELMAN,
Secretary of State.

99 EXHIBIT W.

Copy of mortgageof Conn't property by the H., P. & F. R. R. Co., March 20, 1855.

[Coat of arms.]

STATE OF CONNECTICUT,
Office of Secretary of State:

HARTFORD, PROVIDENCE AND FISHKILL RAILROAD COMPANY.

Whereas the Hartford, Providence and Fishkill Railroad Company, a corporation duly incorporated by the legislature of this State, have constructed their railroad, and the same is open and in operation from the city of Waterbury, in the county of New Haven, and State of Connecticut, to the east line of the State of Connecticut, and from thence, by a union with the Providence and Plainfield Railroad Company, in the State of Rhode Island, to the city of Providence, in said State of Rhode Island, under and pursuant to the provisions of the charter of said railroad company and its several amendments;

And whereas heretofore said railroad company, by their deed bearing date the 25th day of August, 1849, by said company duly executed, acknowledged and deposited for record in the office of the secretary of this State, and by said secretary recorded, as provided and authorized by the charter of said company and its several amendments, conveyed to Thomas S. Williams, William H. Imlay, and D. F. Robinson, and their survivors and the survivor of them, and their successors in the office of trustees, in trust, for the purposes and in the manner and as provided and set forth in said trust-deed, the railroad or roads, with any branch or branches by said company owned or constructed, or to be constructed, under their charter, between the east and west line of this State, together with all and singular the railways, rails, bridges, fences, materials, privileges, appendages, appurtenances, implements, cars, engines, and personal estate used, occupied, and improved for railways, depots, or stations, with the lands and buildings in any way appertaining to and necessary for the proper construction, operation, and security of

said railroad, and all the franchises and chartered rights of said company, except such lands and other property as is or are excepted in said deed and not conveyed thereby;

And whereas, since said deed was so executed and delivered, said company have extended and opened their said railroad, and the same is in operation, as aforesaid, between the points aforesaid, and have to some extent equipped the same with engines, cars, both for freight and passengers, and other equipments, and provided wood, fuel, railroad-ties, iron, rails, timber, tools, and other personal property pertaining
100 to the construction of, maintaining, and operation of said railroad, and in the progress of fully completing, finishing, and putting into operation their said railroad in the manner, to the extent, and as authorized in their charter and the several amendments thereto, are expecting, as accessories and as appurtenant and as a part of their said railroad, or the equipment thereof, to add to the said equipment and to the supplies of fuel, railroad-iron, ties, lumber, timber, and tools necessary and required in and about the said railroad and in operating the same;

And whereas said company have already issued bonds of the character and description in said trust-deed set forth and secured thereby to the amount of one million four hundred and fourteen thousand dollars, consisting of fourteen hundred and sixty-nine bonds in the whole now outstanding;

And whereas it is expected that said company will from time to time issue other and further bonds of the like character and description covered and secured by said trust-deed;

And whereas it is deemed advisable, for the purpose of avoiding any question as to the sufficiency of said deed of trust, to cover and convey, for the purposes therein and thereby intended, all the property of said company intended and assigned to be covered and conveyed by said deed:

Now, therefore, for the purpose of avoiding any such question and for the better and more perfect security of said bonds already and which shall hereafter be issued of the character and description in said trust-deed designated.

Know all men by these presents, that the said Hartford, Providence and Fishkill Railroad Company, by Joseph Trumbull, he being thereunto duly authorized by a vote of the directors of said company, made and passed on the 20th day of March, 1855, as well for and in consideration of the premises aforesaid, and for the better and more perfect security of said bonds already and which shall hereafter be issued as aforesaid, and the persons who are or shall become holders of said bonds, and the payment of the same with interest, as also for and in consideration of one hundred dollars, received to the full satisfaction of said company from said Thomas S. Williams, William H. Imlay, and D. F. Robinson, have granted, bargained, sold, aliened, assigned, transferred, and set over, and hereby doth grant, bargain, sell, alien, assign, transfer, and set over, to said Thomas S. Williams, William H. Imlay, and D. F. Robinson, and the survivors and survivor of them, their heirs, successors in said trust, and assigns, all and every part, parcel, and por-
101 tion of their said railroad so already constructed or which shall hereafter be constructed by said company within the limits of the State of Connecticut under the provisions of their said charter and the several amendments thereof, together with all and every part of the branch or branches thereof already or which shall hereafter be constructed within said State of Connecticut, together with all the iron,

iron-rail, railroad-ties, and other materials provided or which shall be provided by said company for the construction or repair of their said railroad already or which shall hereafter be by said company constructed as aforesaid, together with all the engines, railroad, freight, passenger, or other cars, and equipment for said railroad, and for running and operating the same, including all the machinery, tools, implements, stock, iron, timber, lumber, fuel, and supplies, of all kinds and descriptions required and needed upon said railroad or in any of the shops, wood-sheds, or other buildings pertaining to said road, and which already have been or hereafter shall be by said company provided for their said railroad or for the completion or operating the same, together with the entire franchise and chartered rights and privileges of said company; meaning and intending hereby to convey to said trustees all the real estate within the State of Connecticut, and all the personal property of every kind and description already owned by said company, or which said company may or shall hereafter own or possess, and which, by the provisions of their charter or any of its amendments, or by any of the provisions of the statutes of this State, said company have it in their power to convey for the purposes and in the manner herein provided, except, however, from the operation of this present conveyance the same and all the dwelling-houses, buildings, and building-lots owned or which shall be hereafter owned by said company, and such part of the depots, buildings, and lands within the town of Hartford as are excepted from the operation of the aforesaid trust-deed bearing date the said 25th day of August, 1849, it being distinctly understood and declared that said excepted property is to be taken and deemed to be wholly exempted from the operation of this present conveyance, and wholly unencumbered thereby.

Provided that as to the following property contained in this deed, viz, eight locomotive-engines, named Providence, Hartford, Governor Hoppin, Waterbury, Miantonomo, Sequasson, Wauregan, and Canonchet, with their tenders and tools; six passenger-cars, No. 15 to 20 inclusive, four baggage-cars, No. 5 to 8, inclusive, and eight house-cars, No. 193 to 200, inclusive, this present conveyance is subject to the prior
102 right and title of Alfred Smith thereto until said company shall have fully paid all the remaining promissory notes given for and to procure said property, which notes he indorsed or guaranteed for said company, and which were and are to be paid by them before any title thereto shall vest in said trustees.

To have and to hold the premises hereby granted and conveyed to them, the said Thomas S. Williams, William H. Imlay, and D. F. Robinson, and the survivors or survivor of them, their heirs, assigns, and successors in said office of trustees, in trust to and for the same uses and purposes, and upon all and the same terms and conditions, with all and the same powers, rights, duties, and privileges as are contained, embraced, and provided for in said trust deed first herein mentioned, bearing date the 25th day of August, 1849, and deposited in the office of the secretary of this State, and recorded as aforesaid, to which reference is herein had for all the terms and provisions thereof, which are designed to be contained and embraced in this present deed, in the same manner and to the same extent as if the same were fully recited and set out at length herein.

In testimony whereof the said Hartford, Providence and Fishkill Railroad Company have caused their corporate seal to be hereunto

affixed, and the name of said company subscribed by Joseph Trumbull, specially authorized to do the same, this 20th day of March, A. D. 1855.

THE HARTFORD, PROVIDENCE AND FISHKILL RAILROAD COMPANY,
By JOSEPH TRUMBULL,
[SEAL OF THE CO.] *Their Agent, authorized as aforesaid.*

Signed, sealed, and delivered in the presence of—
J. HAMMOND TRUMBULL,
THOMAS GROSVENOR.

STATE OF CONNECTICUT,
County of Hartford, ss:

HARTFORD, *March 21st*, A. D. 1855.

Then and there appeared the said Hartford, Providence and Fishkill Railroad Company, by Joseph Trumbull, their agent, he being thereunto duly authorized, and acknowledged the above and foregoing instrument, by said company duly executed, to be the free act and deed of said company, and also his free act and deed as their agent thereunto authorized. Before me,

J. HAMMOND TRUMBULL,
Notary Public.

Received 21st March, 1855, and recorded by

O. H. PERRY,
Secretary of State.

STATE OF CONNECTICUT, *ss:*

OFFICE OF SECRETARY OF STATE.

I hereby certify that the foregoing is a true copy of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said State at Hartford this 22d day of September, A. D. 1871.

[STATE SEAL.] HIRAM APPELMAN,
Secretary of State.

103 EXHIBIT X 10.

COMMONWEALTH OF MASSACHUSETTS,
Supreme Judicial Court, Suffolk, ss:

GEORGE ELLIS ET AL.
vs.
BOSTON, HARTFORD AND ERIE RAILROAD CORporation et als. } In equity.

This cause having been fully heard and considered before the full court upon the bill, answers, and agreed statement of facts, and the same having been decided therein, and a rescript thereof having been filed, it is now, in accordance therewith, on this twenty-fourth day of April, A. D. eighteen hundred and seventy-one, declared, ordered, adjudged, and decreed that Moses Kimball, of Boston, Thomas Talbot, of Billerica, and Avery Plumer, of Boston, are by valid appointments, conveyances, and succession, in accordance with the terms of the mortgage hereinafter referred to, duly constituted successors to Robert H. Berdell, Dudley S. Gregory, and John C. Bancroft Davis, in the trusts created and declared in and under the mortgage made by said Boston, Hartford and

Erie Railroad Company to said Berdell, Gregory, and Davis, dated March 19, 1866, referred to in said bill, and are in law the present trustees under said mortgage; and that all the property, estate, franchises, rights, title, interest, trusts, and powers which were by or under said mortgage conveyed to or vested in said Berdell, Gregory, and Davis, are now vested by valid title in said Kimball, Talbot, and Plumer, as trustees under said mortgage.

By the court:

GEO. C. WILD, *Clerk.*

April 24, 1871.

A true copy. Attest:

GEO. W. NICHOLS,
Asst. Clerk.

104 Supreme judicial court.

SUFFOLK, *ss:*

GEORGE ELLIS ET AL., IN EQUITY,
vs.
BOSTON, HARTFORD AND ERIE RAILROAD ET als.

This court, on the twenty-fourth day of April, A. D. eighteen hundred and seventy-one, having decided and decreed that Moses Kimball, of Boston, Thomas Talbot, of Billerica, and Avery Plumer, of Boston, are in law the present trustees, under the mortgage referred to in the bill of complaint in this cause, made by the Boston, Hartford and Erie Railroad Company to Robert H. Berdell, Dudley S. Gregory, and John C. Bancroft Davis, dated on the nineteenth day of March, A. D. eighteen hundred and sixty-six:

It is now, on this ninth day of May, A. D. eighteen hundred and seventy-one, ordered, adjudged, and decreed by the court that upon the payment by said trustees, or their successors in office, to the parties in this cause of their reasonable expenses and counsel fees in this cause, and upon the payment to said receivers by said trustees or their successors, of all sums of money which said receivers have theretofore advanced or borrowed under the order of this court, including what they have borrowed of Elisha S. Converse, (not theretofore repaid,) with interest thereon from the times when the same were advanced or borrowed, and of a proper compensation to the receivers for their services, and upon payment by said trustees or their successors in office of all debts and liabilities and damages, so far as the same can be now fixed and ascertained, which have theretofore been incurred by said receivers, or which they theretofore have become liable for, except the certificates of indebtedness which have been or may be hereafter issued under and in pursuance of the decree of said court dated December 23, 1870, and secured by an instrument of mortgage or pledge executed by said receivers, in pursuance of the decree last mentioned, and William T. Hart, bearing date January 20, A. D. 1871, and also except the contract between said receivers and Norman C. Munson, dated January 20,
105 A. D. 1871, described in said instrument of mortgage or pledge, copies of which instrument and contract are filed in said cause, and upon securing by said trustees of the payment of all such debts, liabilities, and damages, (except as aforesaid,) which may be contingent or unliquidated, to the satisfaction of said receivers, or in pursuance o

an order of this court to be hereafter made, therefor, in this cause, all said sums and claims, to be ascertained and determined, as hereinafter provided by the master appointed by this decree, the receivers in this cause deliver into the possession and control of said trustees or their successors in office all the roads, railways, property, and franchises which they, the said receivers, have in their hands or possession or under their management or control as such receivers.

And it is further ordered, adjudged, and decreed that the said trustees or their successors in office, upon being put in possession as aforesaid, shall, as such trustees, have the right, power, and authority by themselves, their officers, agents, and employees, to take, receive, and operate all said railways, roads, property, and franchises, and receive and have the rents, earnings, income, and profits thereof and therefrom, and to use and apply such part of said rents, income, and profits as shall in their judgment be necessary to the payment of the running and operating expenses of the said railways and roads, including the necessary repairs of road, road-bed, buildings, machinery, and equipment, and all expense of agents, clerks, officers, employees, and laborers, and all claims for damages against said trustees or their successors in office, and to the payment for insurance and taxes on the property, and all items usually distributed to transportation expenses in railroad accounts, and to such increase and improvements of said roads, buildings, machinery, and equipments as the business shall in their judgment require, and to the payment of any and all claims, if any, necessary to secure and assure to them the estate and franchises conveyed by said first-mentioned mortgage, and to their own compensation, and to the employment of competent legal advisers in their discretion, and to any and all other charges that are or should be allowed by a court of equity in a case of a receiver, as settled and established in the case of the receivership of the New York and Erie Railroad.

106 And said trustees, or their successors in office, shall keep full and accurate accounts of all sums received or paid out by them, which shall at all reasonable times be open to the inspection of said Boston, Hartford and Erie Railroad Company, and of the holders of bonds secured by said first-mentioned mortgage, and said trustees or their successors shall, at least once a year, publish abstracts thereof for the use of the holders of said bonds.

And said trustees, or their successors in office, upon taking possession as aforesaid, shall file in the office of the secretaries of state of the States of Massachusetts, Rhode Island, Connecticut, and New York a written notice, acknowledged before a notary public, that they have taken possession of said mortgaged property, franchises, and estate for default in the payment of the interest on said bonds, and with their purpose to foreclose said first-mentioned mortgage for said default.

And if default in the performance of the condition of that mortgage shall continue for the space of eighteen months after such notice shall be filed, the whole of the mortgaged premises and franchises conveyed by that mortgage shall vest absolutely and in fee in said trustees and their successors in office, without further assurance and without further process of law, and all right or equity of redemption of said Boston, Hartford and Erie Railroad Company therein shall be forever barred and foreclosed; but if the whole of the principal and interest of said bonds in arrear, with interest thereon, when the same may by law be demanded, and the lawful claims, disbursements, and liabilities of said trustees and their successors in said office, which may be made or incurred on account of their trust, and all the certificates of indebtedness

aforesaid, and a proper compensation to the trustees and their successors for services, shall be paid and satisfied within said period of eighteen months after said notice shall have been filed, either by said Boston, Hartford and Erie Railroad Company or out of the net earnings of the property in the possession of the trustees or their successors, then said trustees and their successors shall render to said Boston, Hartford and Erie Railroad Company possession of said mortgaged property, franchises, and estate, and of all the additions made by them thereto, and said Boston, Hartford and Erie Railroad Company shall thereupon become entitled to the possession thereof, without further assurance, but still subject to said first-mentioned mortgage, so far as the bonds secured thereby then remain unpaid.

107 But said trustees and their successors shall take the property, estate, and franchises aforesaid, subject to the lien, mortgage, and pledge created by said receivers by said instrument, dated January 20, A. D. 1871, and also subject to said contract between said receivers and said Munson, which contract is hereby declared valid and binding upon said trustees as trustees, but not personally, and which lien, pledge, and mortgage are hereby declared to be in full force, and a paramount lien as set forth in said decree of this court, passed December 23, 1870.

Provided, however, that in case, upon the coming in of the report of the master in this cause hereinafter ordered, it shall appear to the court expedient that a foreclosure of said mortgage shall take place by sale of the mortgage property or otherwise within said period of eighteen months, in such manner as this court shall order, nothing in this decree contained shall be construed to preclude any party to this cause from making application for such other and earlier foreclosure of said mortgage, or this court from passing the proper orders and decrees therefor.

And until the full payment and satisfaction or securing of all sums of money advanced or borrowed by said receivers as aforesaid, and of all debts, liabilities, and damages incurred by them as aforesaid, and of all costs, expenses, counsel-fees, and compensation as above provided, the said receivers shall retain and keep absolute possession of all the property of said Boston, Hartford and Erie Railroad Company heretofore passed into their possession under the order of this court appointing them receivers, and the same shall be continued in their hands and possession and under their management and control as such receivers.

And said trustees and their successors shall make a report under oath to this court as often as once in every six months of their receipts and expenditures as such trustees.

And Horace H. Coolidge, a master in chancery of this court, is hereby appointed to ascertain and report to this court all sums of money which are to be paid by said trustees to said receivers, including all sums of money which said receivers have theretofore advanced or borrowed under the order of the court, including what they have borrowed of Elisha S. Converse, (not theretofore repaid,) with interest thereon, and all debts, liabilities, and damages, so far as the same can be now fixed and ascertained, which have been incurred by

108 said receivers, (except as aforesaid,) and a proper compensation to the receivers for their services, and also all expenses, costs, and counsel-fees which have been incurred in the prosecution of this suit by the several parties thereto, to be allowed to said parties; and also, as nearly as may be, to ascertain and report the amount of liabilities, contingent and unliquidated, incurred by said receivers for which they are in any way liable, to be secured as hereinbefore ordered, and the form, manner, and amount and sufficiency of such security.

And said master is further ordered to report to this court the results of the operation of the railroad in the possession of said receivers, during the time the same has been in their possession, and the amount of the receipts and expenditures of said receivers during said period, and the condition of the property in their possession.

And said receivers are continued in office until the further order of this court.

And either party may apply to the court for further order or direction, as occasion may require.

By the court.

GEO. C. WILDE, *Clerk.*

A true copy. Attest:

GEO. W. NICHOLS,
Ass't Clerk.

109 COMMONWEALTH OF MASSACHUSETTS.

EXECUTIVE DEPARTMENT,
Boston, September 24, 1868.

To the directors of the Boston, Hartford and Erie Railroad Company:

GENTLEMEN: I invite your attention to a few questions which have not been answered to my entire satisfaction, and which, to avoid delay, I propound directly to you. I inclose copies of the communications which have been made to me by commissioners, since they are referred to in this communication.

1. In their first report, the commissioners allowed about $70,000 for certain claims presented to them, besides referring to certain other claims, mentioned on page 5 of my communication to them. In their present report the $70,000 is reduced to $6,000 on the statement of Mr. Graves; and the other claims are not adverted to.

2. As to the relations of the Boston, Hartford and Erie Company to the Providence and Fishkill: A contract is referred to, which has not been produced. On what terms can the former company get possession of the latter company's road?

3. Upon the interest question. Assuming that the road will be finished in May, 1872, there appear to be the following sums for interest due before that time:

Two years' interest on the interest-notes of $1,127,744; that is, interest falling due July, 1870, January and July, 1871, and January, 1872, at seven per cent.....	$157,884 00
Three and a half years' interest—that is, from January, 1869, to January, 1872, including both dates—on $5,090,000 Berdell bonds, as by letter of commissioners, at seven per cent	1,247,050 00
Interest on $6,000,000 Berdell bonds additional, now sold or exchanged, July, 1870, and thereafter two years, at seven per cent.....	840,000 00
110 Interest on $5,000,000 Berdell bonds left remaining, of which $2,600,000 in round numbers will be used to retire the rest of the outstanding bonds, and $2,400,000 will be sold—two years' interest being that falling due July, 1870, and thereafter	700,000 00
Interest now overdue on outstanding bonds, as by commissioners' letter.....	50,000 00
	$2,994,934 00

Interest on floating debt balance $609,000 (depending on when it becomes due.)

Interest on State scrip, from time when it is issued.

The commissioners report that the probable earnings may be assumed as sufficient to take care of the interest.

4. It is said that the Erie Railroad bought $5,000,000 of Berdell bonds for $4,000,000, paying $2,000,000 in money, and $1,570,400 in acceptances.

$2,000,000 00	$4,000,000 00
1,570,400 00	3,570,400 00
$3,570,400 00	$429,600 00

In what manner do they receive payment for the balance?

5. Law question as to acceptances.

"The Erie Railroad Company, for the purpose of aiding the Boston, Hartford and Erie Railroad Company in the construction of their railroad, having bought of the latter company their mortgage-bonds to the amount of $5,000,000, and received the same, agreeing to pay for the same the sum of $4,000,000, and having paid therefor partly in money and partly by giving their acceptances payable at various dates hereafter, the question is, whether said acceptances are legally binding upon the Erie Railroad Company, and whether individual stockholders of that company can legally prevent the payment thereof by injunction or otherwise, and whether or not there was anything in the action of the legislature of New York of last winter affecting this subject."

ALEXANDER H. BULLOCK.

111 BOSTON, *September* 26, 1868.

To his excellency Hon. A. H. BULLOCK:

DEAR SIR: Your favor of the 24th inst. was duly received, and in reply we have the honor to submit the following answers to your interrogatories.

Very respectfully, yours,

JOHN S. ELDREDGE.
HENRY N. FARWELL.
JAMES S. WHITNEY.
J. W. CONVERSE.

1. In answer to question No. 1 of his excellency, (of this date,) the Boston, Hartford and Erie Railroad Company answer: That the commissioners published notices, asking for all claims to be shown which any had against the franchises or estates which the Boston, Hartford and Erie Railroad Company held, and the claims brought in were submitted to this company. Between the time of the first and second report sundry of them were taken up, and on the day of the statement of Mr. Graves, the amount of the claims presented were believed to be only valid to less than six thousand dollars. The commissioners have the original claims.

2. The contract with the Hartford, Providence and Fishkill Railroad Company referred to was furnished the honorable commissioners. It was in reference to the purchase and sale of said Hartford, Providence and Fishkill Railroad to the Boston, Hartford and Erie Railroad Company. The purchase was made under special power from legislatures of Rhode Island and Connecticut, and the conveyance was by deed. There is no provisions as to having possession of the road, other than found in the mortgage-deeds. These provide that whenever all

112 overdue debt and interest secured under the mortgages are paid, the road, &c., shall be given to its owner, i. e., the Boston, Hartford and Erie Railroad Company. Of the bonds secured, one million is due in 1875. The balance is overdue on the face of bonds, but the trustees advise us they have, with contract with holders of the overdue bonds, attached new coupons to fall due semi-annually until 1876, and that thus the payment of the principal is extended until that time. But at the most, on payment of one million of dollars, and back interest of less than one hundred and fifty thousand dollars, possession can be had at once. There is a sinking-fund against the above bonds of about two hundred thousand dollars.

3. Upon the interest question: (1.) The written contracts for construction of our road from Boston to the Hudson River provide for the completion of the whole line before 1870; and so the item for interest to accrue on the interest-notes to fall due after January, 1870, it seems to us, should not stand as a charge against our ability to complete the road. (2.) The interest on the $5,090,000 Berdell bonds must be paid from earnings, or bonds or notes. This will be a year's interest on them before completion of the road. (3.) Interest on $6,000,000 not sold, reckoned at $840,000, after 1870, we consider should not now enter into the account. (3½.) Interest on $5,000,000, left remaining, we consider not to be accounted, for we do not expect to sell them until the cash on hand and the State aid is exhausted. (4.) Interest on $50,000 overdue interest on outstanding bonds. Our answer to this to commissioners was, and we repeat it here: The old bonds are being exchanged daily, and we expect all that amount, or most of it, will be absorbed in interest-notes to fall due in 1872, and so not a charge on any present funds or bonds. (5.) Interest on floating debt we regard a proper present charge.

The income on our running roads to-day show us we can from that source pay the interest on all bonds out, and such as will be put out, including any State-aid bonds, and that when our road is completed to Willimantic, which is contracted to be done within a year, that then the income will exceed any bonds or other indebtedness out. This is believed to be true, with no road completed beyond Waterbury. This we understand to be the opinion of the honorable commissioners.

113 & 114 4. The four hundred twenty-nine thousand six hundred dollars inquired about: Of this amount three hundred and twenty-five thousand dollars ($325,000) is in hand and present available funds, cash, in possession of the president and vice-president, and the balance has been expended in the construction account of the railway.

5. Acceptances: The opinion of Mr. Evarts and others was had as to power of Erie Railway Company to contract with and indorse the bonds of this company; and since the question has been raised on the acceptances, we have sent for and obtained Mr. Evarts's opinion in the above matter. We take pleasure in handing herewith that opinion. Hope it will be found to give your excellency the same confidence in our course we feel ourselves.

115 COMMONWEALTH OF MASSACHUSETTS.

Supreme judicial court for the Commonwealth.

AT BOSTON, *January Term*, 1872.

In the case of George Ellis & al. vs. The Boston, Hartford & Erie R. R. Co.; in the matter of the petition of James W. Converse & al.,

receivers, vs. Henry N. Farwell, pending in the supreme judicial court for the county of Suffolk:

Ordered, that the clerk of said court in said county make the following entry under said case in the docket of said court, viz:

Plaintiffs' exceptions sustained; decree for the receivers upon the evidence reported.

By the court:

GEO. C. WILDE, *Clerk.*

APRIL 3, 1872.

116 *Brief statement of the grounds and reasons of the decision.*

The court finds upon a careful examination of the evidence, and giving due consideration and weight to the master's report, that the def't, Farwell, had no right or title to the coupons described in the petition, and which were in his possession at the time of the appointment of the receivers, and now has no right to hold them as security for any debt or claim against the Boston, Hartford & Erie Railroad Company; and that the right to the possession and the title to them is now in the petitioners, as receivers of said corporation.

This is found as a matter of fact deduced from the evidence.

There is no question of law involved upon which it is necessary to give an opinion.

117 (Indorsed:) 562, eq. No. 591, eq. D. Supreme judicial court for the Commonwealth. Rescript Suffolk County. Ellis v. B., H. & E. R. R. Co. Pet'n. Converse & als. v. Farwell.

118 UNITED STATES OF AMERICA.

Form No. 18, *assignment of bankrupt's effects.*

In the district court of the United States for the district of Massachusetts.

IN THE MATTER OF THE BOSTON, HARTFORD and Erie Railroad Company, bankrupt corporation. } In bankruptcy. No.—.

DISTRICT OF MASSACHUSETTS, *ss:*

Know all men by these presents, that Charles S. Bradley, of Providence, in the State of Rhode Island, Charles R. Chapman, of Hartford, in the State of Connecticut, and George M. Barnard, of Boston, in the county of Suffolk and State of Massachusetts, in said district, have been duly appointed assignees in said matter. Now, therefore, I, S. Lothrop Thorndike, register in bankruptcy of said district, by virtue of the authority vested in me by the 14th section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said Charles S. Bradley, Charles R. Chapman, and George M. Barnard, assignees as aforesaid, all the corporate estate, real and personal, of the said Boston, Hartford and Erie Railroad Company, bankrupt corporation aforesaid, including all the property, of whatever kind, of which it was possessed or in which it was interested or entitled to have on the twenty-first day of October, A. D. 1870, with all its deeds, books, and papers relating thereto, excepting such property as is ex-

empted from the operation of this assignment by the provisions of said fourteenth section of said act, to have and to hold all the foregoing premises to the said Charles S. Bradley, Charles R. Chapman, and George M. Barnard, and their heirs forever, in trust, nevertheless, for the use and purposes, with the powers, and subject to the conditions and limitations set forth in said act.

In witness whereof I, the said register, have hereunto set my hand and caused the seal of said court to be affixed this eighth day of March, A. D. 1871.

[L. S.] S. LOTHROP THORNDIKE,
Register in Bankruptcy.

A true copy. Attest:
EDWARD DEXTER, *Clerk.*

119 I, Edward Dexter, clerk of the United States district court for the district of Massachusetts, hereby certify that the foregoing is a true copy of the paper on file in said clerk's office.

In witness whereof I have hereunto subscribed my name and affixed the seal of the said court this eighth day of September, A. D. 1871.

[SEAL.] EDWARD DEXTER, *Clerk.*

(Indorsed:) No. 1978. In bankruptcy. Assignment of bankrupt's effects. Boston, Hartford & Erie R. R. Co. Filed in court this March 20th, A. D. 1871. X' Resp'ts.

120 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

I, George W. Nichols, assistant clerk of the supreme judicial court within and for said county of Suffolk, hereby certify that the foregoing are true copies of papers mentioned in the foregoing agreement of counsel and referred to in the printed record in the case of Henry N. Farwell plaintiff in error, vs. James W. Converse, George M. Bartholomew, and J. Graham Gardiner, receivers of the Boston, Hartford and Erie Railroad Company, and used as evidence at the hearing before said supreme judicial court in the matter of the petition of said James W. Converse et alii, receivers, petitioners, vs. said Henry N. Farwell, defendant, in the suit entitled George Ellis et alii, in equity, vs. Boston, Hartford & Erie Railroad Company et al.

121 In witness whereof I have hereto set my hand and affixed the seal of said court this twenty-sixth day of March, A. D. eighteen hundred and seventy-five.

[SEAL.] GEO. W. NICHOLS,
Asst. Clerk.

(Indorsement on cover:) No. 241. Henry N. Farwell, pl'ff in error, vs. James W. Converse & al. Stipulation of counsel & addition to record. Filed 29th March, 1875.

SUPREME COURT OF THE UNITED STATES.

No. .....

HENRY N. FARWELL,

Plaintiff in Error,

v.

JAMES W. CONVERSE ET AL.,

Receivers of the Boston, Hartford & Erie R.R. Co.

BRIEF FOR PLAINTIFF IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

This is a writ of error to the Supreme Judicial Court of the Commonwealth of Massachusetts.

The case is this: —

By decree of said court, dated August 2 1870, in the suit of George Ellis *et al. vs.* The Boston, Hartford & Erie Railroad Company, certain persons were appointed receivers of all the property of that company, with full power and authority to take possession of such property, and the same to demand, collect and receive by suit or otherwise. (Addit. Rec. p. 20 *et seq.*)

On the 2d of May 1871, the defendants in error and one Gardiner (since resigned) were, by orders of said court, successors in office of the persons so originally appointed receivers, and on that day filed their petition in equity in said court against Henry N. Farwell (plaintiff in error), and thereafter an amendment thereof, praying that he be decreed to deliver up to the petitioners, as such receivers, certain named coupons, alleged to be the property of said railroad company, and by him received as agent of, or in trust for, that company, and in his possession; and for an injunction, restraining said Farwell from collecting, or in any way negotiating or disposing of the said coupons, except so to deliver them.

The said Farwell, by his answer and amendment thereof, duly filed, admitted his possession of said coupons

(except five hundred coupons of the city of Providence, by him, in good faith and for valuable consideration, before demand upon him by said receivers, delivered to *bona fide* purchasers); denied that they were the property of said railroad company, or received by him as agent of or in trust for that company; and alleged that before the filing of said petition, to wit, on the day of 1870, the said Boston, Hartford & Erie Railroad Company was adjudged a bankrupt by a decree of the District Court of the United States for the District of Massachusetts; and that afterwards, on the 18th day of March 1871, J. Lothrop Thorndike, a register in bankruptcy of said district, did, by his deed of assignment, according to the statute of the United States in such case made and provided, convey and assign to certain persons named, assignees of said company duly elected and appointed, all the estate real and personal of said railroad company, including all the property of whatever kind of which the said company was possessed or in which it was interested, or which it was entitled to have on the 21st day of October 1870, excepting only such property as was, by the provisions of said statute, exempted from the operation of said assignment; and therefore submitted that the said petitioners had not at the date of filing their petition, if they ever had, any right to the possession of any of the property of said railroad company, and particularly to the possession of the coupons in said petition mentioned (Rec. p. 8).

Issue was joined and evidence taken, and with other proofs, proof of said adjudication in bankruptcy and assignment was made by said Farwell (Addit. Rec. pp. 70, 71).

Thereafter, April 3 1872, a decision in favor of the peti-

tioners was rendered by said court (Addit. Rec. p. 70). And on May 5 1873 a decree was entered by the court that the right to the possession and the title to said coupons was in the petitioners, James W. Converse, George M. Bartholomew and J. G. Gardiner, as the remaining receivers of the property of the Boston, Hartford & Erie Railroad Company, notwithstanding the amended answer of said Farwell and the alleged adjudication in bankruptcy and subsequent assignment mentioned therein; and that said Farwell be perpetually enjoined from making any sale, transfer or other disposition of said coupons, otherwise than to said receivers; and that he deliver up forthwith to said receivers all said coupons, and that they recover of said Farwell $1236\frac{25}{100}$ as costs, and that execution issue therefor (Rec. pp. 31, 32).

Thereupon said Farwell sued out this writ of error.

After this decision on August 28 1872, but before said decree, the assignees in bankruptcy of the Boston, Hartford & Erie Railroad Company filed the paper printed on page 31 of the record.

The error assigned is, that the court below held that the right and title to the coupons in controversy was in the defendants in error, as receivers of the Boston, Hartford & Erie Railroad Company, and they were entitled to maintain suit to recover the same; notwithstanding the adjudication of the bankruptcy of that company, and the assignment of all its property by register in bankruptcy to assignees in bankruptcy before suit brought by the defendants in error.

I.

The question thus presented is one within the jurisdiction of this court.

1. This was a final decree in a suit in equity in the highest court of law or equity of the State of Massachusetts.

Though in form, under the practice in Massachusetts, a petition entitled in the suit in which the receivers were appointed, the petition was really a bill in equity, and the suit was in all respects a suit in equity.

The decree was final (Rec. pp. 31, 32).

2. There was drawn in question the validity of an authority exercised under a state, on the ground of its being repugnant to the laws of the United States, and the decision was in favor of such authority.

The receivers were officers of the state court; and the validity of their authority as such officers, after bankruptcy of the railroad company and assignment of its property, was directly drawn in question on the ground of its being repugnant to the bankrupt law of the United States, and the decision was expressly in favor of such authority.

II.

The receivers of the Boston, Hartford & Erie Railroad Company were not entitled to maintain suit for the recovery of the coupons in controversy after the adjudication of the bankruptcy of that company, and the assignment of all its property by a register in bankruptcy to assignees in bankruptcy duly elected and appointed.

The statute of the United States, the paramount law of the land, in force at the time of the commencement of proceedings in bankruptcy against the Boston, Hartford & Erie Railroad Company, provided that, as soon as the assignee in bankruptcy was appointed and qualified, the judge of the District Court, or in case of no opposing interest, the register, "shall, by an instrument under his hand, assign and convey to the assignee all the estate, real and personal, of the bankrupt, with all his deeds, books and papers relating thereto; and such assignment shall relate back to the commencement of said proceedings in bankruptcy, *and thereupon, by operation of law, the title to all such property and estate, both real and personal, shall vest in said assignee,*" &c. (14 Stat. at large, 522, § 14).

The statute is explicit and peremptory that the title to all the property and estate of the bankrupt shall, upon assignment in bankruptcy duly made to assignee in bankruptcy, by operation of law, be held to be vested in such assignee.

And it is submitted that, after such assignment, the assignee in bankruptcy, and he alone, is entitled to bring suit for the possession of property claimed to be the property of the bankrupt.

Smith *v.* Buchanan, 8 Blatch. 153.

In the present case the assignment in bankruptcy was made March 8 1871, of all the property to which the Boston, Hartford & Erie Railroad Company was entitled on October 21 1870 (Addit. Rec. pp. 70, 71). The suit against the plaintiff in error was brought May 2 1871, nearly two months after the assignment in bankruptcy, and nearly eight

months after the commencement of the proceedings in bankruptcy (Rec. p. 6).

The cases in which it has been held that the United States Bankruptcy Courts will not interfere with property in possession of a state court do not apply in this case.

Whether or not the principle of those cases can be maintained it is not necessary to discuss. They are distinguished from this case by the fact that in all of them the officers of the state court were *actually in possession of the property in controversy* at the time of the commencement of the proceedings in bankruptcy.

Sedgwick *v.* Merick, 6 Blatch. 156.
Clark *v.* Bininger, 3 N.B. R. 524.
Alden *v.* Railroad Co., 5 N.B. R. 230.
Beecher *v.* Bininger, 7 Blatch. 171.

The question of the right of receivers appointed by a state court to maintain suit for the recovery of alleged property of a bankrupt, after adjudication in bankruptcy and assignment to assignees, has never been decided.

It cannot be contended that the decree appointing the receivers of its own force put them into possession of the property in controversy. The decree cannot be so construed. Its language and spirit are directly opposed to such a construction (Addit. Rec. pp. 20, 21).

To hold that the mere appointment of receivers by a state court *ipso facto* puts them into possession of all the debtor's property, would be to deal an almost fatal blow at the bankrupt law. For if, as has been held, the Bankruptcy Court

will not interfere with property in the possession of receivers, and the mere fact of their appointment puts them possession, it will be an easy matter to avoid the operation of the bankrupt law, or make proceedings under it a solemn farce, by the simple expedient of a suit against the debtor and appointment of a receiver of his property.

The filing of assent of the assignees in bankruptcy to a proposed decree after decision of the cause in favor of the receivers, is not material.

The assignees were never parties to the suit. The plaintiff in error, at the very beginning of the suit, insisted that they only were the proper parties. They neglected or refused to appear *until after the suit was decided against the plaintiff in error. Then they assented to a proposed decree against him.*

This is playing fast and loose with the suit. If the decision had been in favor of the plaintiff in error, the assignees would not have been bound by it, and could have brought suit at once against him for the same property in the United States Court or the state court, as they chose.

The plaintiff in error insisted from the beginning that the claim of the assignees to these coupons was the only claim he was obliged to contest. They made no claim. They did not seek to intervene. But after decision against the plaintiff in error on this point, they filed an assent to a proposed decree, ordering the property to be delivered to parties who, it is submitted, were not entitled to it.

This assent cannot affect the question raised on this writ of error. The decree that the receivers were entitled to the possession of the property, notwithstanding the bankruptcy

proceedings, was made by the court below, before the assignees' assent was filed; and no notice of that assent was ever taken by the court.

If it was error, as we submit it was, so to decide, that error was not cured by the assignees' assent to a decree in accordance with such erroneous decision.

It is submitted that the defendants in error were not entitled to maintain their suit in the court below, and that the decree in that court should be reversed, with directions to dismiss the petition in that court.

CAUSTEN BROWNE,
for Plaintiff in Error.

BRIEF FOR DEFENDANTS IN ERROR.

Supreme Court of the United States.

No. 31. FARWELL IN ERROR *vs.* CONVERSE ET AL.

No. 32. LONG ET AL. IN ERROR *vs.* SAME.

WRIT OF ERROR TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS.

OCTOBER TERM, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 31. October Term, 1875.

H. N. FARWELL, PLAINTIFF IN ERROR,

vs.

JAMES W. CONVERSE, ET AL., RECEIVERS OF THE BOSTON, HARTFORD AND ERIE RAILROAD COMPANY.

WRIT OF ERROR TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS.

BRIEF FOR THE DEFENDANTS IN ERROR.

The facts of this case are stated more in detail on pp. 2–4 *infra*, but its general outline is as follows:

In August, 1870, the Supreme Judicial Court of Massachusetts, upon a bill to foreclose a mortgage, appointed Converse and others, the defendants in error, to be the receivers of the property of the Boston, Hartford & Erie Railroad Company, and directed its officers and all other persons to turn its property and papers over to the receivers.

In the spring of 1871, the receivers filed a petition in the cause, setting forth that Farwell (now plaintiff in error) an officer of the road, and a defendant named in the bill, upon whom it had been served and against whom it had been taken for confessed, had documents and property of the corporation in his possession and refused to give the same up to them, and praying that he might be compelled to obey the decree already made. He answered to the merits, claiming private ownership in the property. He also answered that since the receivership the corporation had been put into bankruptcy and assignees appointed, in whom the property, if of the corporation, had become vested, and therefore that the receivers had no right, and the state court no jurisdiction to proceed against him.

It is upon the failure of this defence that the present writ of error is brought.

And it is brought by Farwell alone, for the assignees, so far from complaining, have expressly upon the record assented to the decree which has been made below. (Record, p. 31.)

This is therefore a writ of error to the Supreme Judicial Court of Massachusetts, brought in a suit in equity in which it is claimed a question under the laws of the United States arose and was decided.

Under the Judiciary Act of 1867, this court will not proceed in the cause, unless it shall appear that the federal question was raised by the plaintiff in error, passed upon by the court, so decided as to deny to the plaintiff in error some right or exemption which he claimed under the laws of the United States; that the decision of the court below upon that question necessarily carried the adverse judgment while a contrary decision on that question would necessarily have carried a contrary judgment in favor of the plaintiff in error upon the facts found. And in determining whether the case calls upon this court to examine the federal question sought to be presented, the adjudication below upon all other questions of fact and of law will be accepted as conclusive, unless there shall be reason to believe that the state court is wilfully abusing the credit habitually given to its adjudications. So much is settled law.

Murdock *v.* Memphis, 20 Wall. 590.

To this writ we make four answers:

1. The plaintiff in error is not entitled to the writ.

2. Upon the facts presented, the decision of the court below ought to have been against the plaintiff in error upon the federal question which he sought to raise.

3. Even if the construction of the U. S. Statute contended for by the plaintiff in error (defendant below) were correct, yet the facts of the case as found by the court below made the federal question immaterial.

4. The court below was correct in its finding of facts.

The material facts are as follows:

July 20, 1870, George Ellis and others filed a bill in equity in the Supreme Judicial Court of Massachusetts against the Boston, Hartford and Erie Railroad Company, H. N. Farwell and others. It was a bill in behalf of themselves and other mortgage bondholders, (supplemental record, p. 2), and prayed for a foreclosure, and for a receiver *of the mortgaged property, pendente lite.* (Ib. p. 10.) The subpœna is dated July 20, 1870, (Ib. p. 24), and served on the corporation and on plaintiff in error, Farwell, July 21, 1870, (Ib. p. 25.)

August 2, 1870, (Ib. pp. 20, 24), a decree was made placing all the property, books, deeds, leases, contracts, papers and vouchers

of the corporation in the hands of receivers, and ordering all officers of the company to surrender the same to the receivers (p. 21.)

February 25, 1871, the bill was taken for confessed against H. N. Farwell, the plaintiff in error, (Ib. p. 25) who was described in the bill (Ib. p. 5) as a director, and in the evidence (record, p. 185) is proved so to have been.

May 9, 1871, the court ordered the receivers to transfer the property in their hands to the trustees (suppl. rec. p. 64), for the purpose of foreclosure, and this transfer was actually made August 17, 1871, (record, p. 235), but by this order the receivers were expressly continued in office (suppl. rec., p. 67.)

May 2, 1871, the receivers filed their petition against Farwell, referring to the foregoing proceedings, and alleging that he had in his possession certain coupons, of which by said decree they had been ordered to take possession, and which, by said decree, he had been ordered to deliver up to them, (p. 5.) They alleged that he held the coupons in his possession merely as an officer of the corporation, and as its property; if he claimed to hold them as collateral for a debt due from the corporation to him, they charged that no such debt ever existed, that it had been paid, that he did not receive or hold the coupons as collateral for any debt; that if he had any apparent or nominal title to them, it was solely in trust for the corporation; that the corporation had no right to sell or transfer them to him or any other person.

The prayer was, that he might be required to deliver them to the receivers.

The original answer of Farwell (p. 6), substantially denied each of these allegations. The case went to a master, who reported the evidence, and his findings. Upon exceptions by both parties, both to his findings of fact and conclusions of law, the case came before a single Judge, when it was reserved for the full court *in banc*, heard by them and decided in favor of the receivers, April 3, 1872. The decision of the court as stated in its rescript was, "Plaintiff's exceptions [to master's report] sustained. Decree for the receivers upon the evidence reported," (principal rec., p. 31); and the "brief statement of the grounds and reasons of the decision" which by the laws of Massachusetts (Gen. Stats., c. 112, § 11);* constitutes a part of the rescript, was as follows:

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* *Gen. Stats. of Mass.*, c. 112, § 11. And the full court shall, as soon as may be after a decision of the questions submitted to it, make such order, direction, judgment or decree, as is fit and proper for the further disposition of the cause, and enter the same, or cause a rescript containing a brief statement of the grounds and reasons of the decision, to be filed therein.

"The court finds, upon a careful examination of the evidence, and giving due consideration and weight to the master's report, that the defendant Farwell had no right or title to the coupons described in the petition, and which were in his possession at the time of the appointment of the receivers, and now has no right to hold them as security for any debt or claim against the Boston, Hartford & Erie Railroad Company, and that the right to the possession and the title to them is now in the petitioners as receivers of said corporation.

This is found as a matter of fact deduced from the evidence.

There is no question of law involved, upon which it is necessary to give an opinion." (Suppl. Rec., p. 70.)

The final decree, and the only decree made in the case, was entered May 3, 1873, and its recitals follow the terms of the rescript. (Record, p. 32,)

This was clearly an adjudication, that none of the denials or defences set up by the original answers of Farwell which were material in law, had any foundation in fact, so that, for all the purposes of civil proceedings, he stood in the same position as if, being an officer of the corporation, he had embezzled the property entrusted to him; and this adjudication will not be disturbed, for no federal question was involved in it.

The defendant below filed an amendment to his answer before the case went to the master. This amendment (rec. p. 9,) sets up that on March 1, 1871, the B. H. & E. R. R. Co., was declared a bankrupt, and on March 18, 1871, the register in bankruptcy conveyed to Messrs. Bradley, Chapman & Barnard, its assignees, all the property which the corporation owned on Oct. 21, 1870; and that this assignment was before the receivers filed their petition. Subsequently, August 28, 1872, the assignees filed a paper in the cause (p. 31), in which they declared, in terms, that they assented to the decree proposed to be made, and to the delivery of the coupons to the receivers as therein ordered. And afterwards, May 5, 1873, the final decree, expressly referring to the amended answer, was made (p. 32). And to this decree the assignees have raised no objection, and do not appear here to urge any.

I.

It is clear, that the amended answer does not set up any title in the defendant Farwell accruing to him under any statute of the United States. It is well settled, that the right to bring a writ of

error under the second clause of the 25th section of the old judiciary act, is given to the party who claims the right or the title under the statute the construction of which is drawn in question; it is for him to exercise it or not as he sees fit, to protect his own interests. The writ is not given to strangers, volunteers, mere trespassers or wrong doers who hold not under, but adversely to such right or title.

Henderson *v.* Tennessee, 10 How. 311, and cases cited.

The Act of 1867, § 2, under which this writ was brought, reenacted in this respect the language of the old law, the only change made serving to make the case still stronger against this plaintiff in error. For the language of the old law which seemed to give some color to the idea that it was enough that the right claimed was such that it "drew in question the construction of any clause of . . . a statute of the United States," was omitted, and the present act is in terms restricted (as by the decisions of this court the former act was restricted) to cases of a "right, title, etc., claimed under . . . any statute of the United States." R. S., § 709, follows the act of 1867.

The first part of § 2 of the Act of 1867 (R. S., § 709) must receive the same construction. It is true that the receivers exercise an authority given by the state court, the power of which Farwell denies, and he assigns a statute of the United States as the ground of his denial. But the same reasons which led the court in *Murdock* v. *Memphis* (20 Wall. 590) to hold that a very striking change of language did not indicate an intention to change the old construction with regard to the questions raised, will lead the court now to say that a ~~much slighter variation~~ in the same section ~~does not indicate~~ an intention to inaugurate a change in the settled rule as to the persons who are entitled to raise the questions. And to hold that a different rule applied in resisting a claim made by state authority, and asserting an immunity claimed under federal authority would be not merely to introduce discord into the law, but to provide grounds for opposite decisions in the same case. Indeed the language of this part of the section is less strong in favor of the plaintiff's claim than the language of the law of 1789 already quoted, and upon which *Henderson* v. *Tennessee* was decided.

It will be observed that no money demand is made on Farwell. The petition asks and the decree orders a surrender of possession of property merely, — like an ejectment suit.

This affords a conclusive answer to this writ, which must therefore be dismissed.

+ * forbid any inference of

& amendment of the same language

II.

But if the foregoing objection were not fatal, we should submit that the federal question sought to be raised ought to be decided adversely to the plaintiff in error; and that his amended answer is founded upon a misconception of the law.

(1) It is settled beyond controversy, that the U. S. Courts do not possess exclusive jurisdiction as to every question and controversy in which the estate of the bankrupt may be interested. The purposes of Congress are satisfied if it leaves to the state courts their existing powers to adjudge private, civil controversies, subject always to an adequate power in the officer who represents the bankrupt estate in the administration of the bankrupt act to elect at a proper time which forum he will resort to, or submit to, or to which forum he will transfer existing controversies, and to a paramount authority in the federal courts to give effect to that election.

Whether the assignee must actively interfere, or whether he may simply regard all proceedings in the state court as absolutely void unless he expressly submits to the jurisdiction, or asks its aid, is not material, for in this case he actually came into court, and in terms assented to the proposed decree before it was passed, and has not since complained of it.

The difficulty with a state court is not want of jurisdiction to render judgments binding upon all parties before it; it is want of power to compel the assignee to come before it. But when he voluntarily submits himself, either as plaintiff or defendant, the difficulty ceases.

And the following authorities are absolutely decisive of this case.

Doe v. *Childress*, 21 Wall, 643, 646. "Where the power of a state court to proceed in a suit is subject to be impeached, it cannot be done except upon an intervention by the assignee, who shall state the facts, and make the proof necessary to terminate the jurisdiction."

Mays *v.* Fritton, 20 Wall. 414.

(2) The peculiar position of this bankrupt corporation, suggests many reasons why it was highly for the advantage of the estate, that the assignees should follow the course they took. But these reasons are not material. It is enough that the assignees have so acted, and that it does not appear that their action has been disapproved by the court of bankruptcy under whose directions they act.

(3) But even if, after the submission of the assignees, the plaintiff in error, Farwell, could raise the objection, and if it were well founded in point of law, it would not avail him in this case. He was a trusted officer of this corporation, found in possession of the property of the corporation which came into his possession while he was an officer. He cannot have any possible cause of complaint unless it appears that hereafter, if called upon to surrender it to the assignee, this decree will not protect him. But the submission and assent of the assignee, make the decree binding on the latter, and estop them from setting up against Farwell any claim inconsistent with it.

III.

The facts actually found by the state court are decisive of this case, and render the federal question sought to be raised wholly immaterial.

The defence set up by the amended answer could not be made out except by establishing as matter of fact that the coupons in question would vest in the assignees as assets of the estate, to be applied for the benefit of creditors.

(1) The Boston, Hartford and Erie R. R. Co., (the bankrupt) under authority of its charter (suppl. rec., p. 27), bought the Hartford, Providence and Fishkill R. R., upon terms which are contained in the agreement of purchase, of August 28, 1863, (suppl. rec. p. 29). The H. P. & F. R. R. was at that time subject to a mortgage or mortgages, which thus became in effect the debt of the B. H. & E. R. R., and an incumbrance on its own property. The coupons in question belonged to bonds issued under those mortgages, and were overdue at the time of the transfer, and were either paid and dead, or were an existing incumbrance. In 1866, the B. H. & E. R. R. Co. made a mortgage commonly known as the Berdell mortgage, covering all their line, including the portion bought of the H. P. & F. Under the declarations, recitals and covenants in that mortgage (suppl. rec., pp. 12, 15), it is clear that the B. H. & E. could not buy up underlying liens and set them up against their mortgage grantees. As matter of law, if they acquired them they could not set them up against any one except under and according to the peculiar provisions of § 5 of their charter (suppl. rec. p. 27), which empowered them to purchase such existing claims, and hold them substantially for the better protection of their title, but expressly "without the right to sell or assign the same to any person or corporation." Both by reason of the mortgage therefore, and by reason of the provision of the charter, neither

the corporation nor the assignees could treat them as assets for the payment of debts, — to be sold in the market and become outstanding claims against the property in the hands of strangers. In no sense, therefore, were they assets, and so far as they had any vitality they belonged to the holders in mortgage of the title which they were kept alive to protect, and of which they were muniments.

(2) In 1867, these coupons were in the possession of the Spragues, of Rhode Island, who had acquired them from the owners of the bonds to which they belonged, and from the Spragues, they passed, in 1868, to the parties now concerned. It was disputed whether the Spragues had purchased them and held them alive, or whether they had paid them, and had a claim against the H. P. & F. as for a loan of the money, (See testimony of Bartholomew, record, p. 74).

(3) But in one view it was not practically material to the B. H. & E. R. R. at that time how the Spragues held them, because, under the purchase of the H. P. & F. R. R. the B. H. & E. R. R. Co. bound itself to pay all existing claims against the H. P. & F. R. R. Co., outside the mortgages (suppl. rec. p. 31, § 5), and the better to ensure this payment, certain stock known as "debt-stock" was placed in the hands of trustees for the purpose (§ 7, Ib. p. 32). Farwell was vice-president of the B. H. & E. R. R. Co., and one of its principal financial officers. In the spring of 1868, by a draft on him, there was paid to the Spragues a certain sum of money, in consideration of which the Spragues transferred to him all their claims for money and the coupons in question. In the course of the same year all the remaining "debt-stock," 7349 shares, was transferred to Farwell, by the trustees, of whom he was one (rec. p. 251; dep. of Eldridge, p. 180–1), and at this time it was worth $30,000 to $40,000 more than the amount paid to the Spragues. (Farwell, p. 190.) And subsequently, Farwell sold the stock and retains the money. (Farwell, pp. 190, 273,) but it had fallen very much in price at the moment of the sale.

Farwell contends that he purchased the Sprague claim on his private account; that he held the coupons either absolutely as his own, or as collateral for that claim, and held the "debt-stock," also, as collateral. The receivers contended, that this was a purchase by the R. R. Co., and a cancellation both of the claim and of the coupons, (even if the Spragues held them as existing claims) and an advance by Farwell to the B. H. & E. R. R., afterwards repaid by the transfer of the stock, or by much other money of the R. R. Co. which passed through his hands.

James S. Whitney, a director of the road at the time, testified unequivocally to this view of the transaction (pp. 110, 111).

Hon. Emory Washburn, of the Cambridge Law School, ex-governor and ex-judge of Massachusetts, one of the state commissioners in the matter of the B. H. & E. R. R., (p. 98) was required in the course of his official duty, in 1868, to ascertain the state of the Sprague debt, which the Spragues had brought to his notice before the transfer to Farwell, and which amounted to upwards of $150,000. After that transfer, Farwell assured the commissioners that the claim had been paid. An affidavit of Mr. Graves, who had been counsel for the B. H. & E. R. R. from 1863 to 1870, but who at the time of this suit was under a general retainer for Farwell, and appeared also as a principal witness for him, (record p. 165), and who had in person negotiated the business of 1868 with the Spragues, was procured by Farwell, Sept. 19, 1868, and handed to Mr. Commissioner Washburn, to the effect that the Sprague claim had been paid, and could not and would not be collected from the B. H. & E. R. R. Co., or from any estate in its possession (record p. 247). This paper was formally referred to and adopted in a written communication sent to the Governor of Massachusetts, September 26, 1868, and signed by Farwell himself; and this communication stated, that "between the date of the first and second reports of the commissioners, [viz., between July 30, 1868, and Sept. 19, 1868,] sundry claims presented to the commissioners were taken up, and on the day of the statement of Mr. Graves the amount of the claims presented were believed to be only valid to less than six thousand dollars" (suppl. rec., p. 68). Another paper prepared by Mr. Graves, but apparently coming from the directors, of whom Farwell was one, declared in terms, that the Sprague claim was "paid," (p. 248), and these papers were the representations upon which the corporation obtained a loan from the State. Similar statements were made at other times by Graves (p. 168), and by Eldridge, President of the road, a witness called by Farwell, (p. 182).

Now it is obvious, to say the least, that each of these three grounds, taken by the receivers, were sustained by substantial evidence, and that if any one of them were true in fact, the coupons were paid obligations, or belonged to the mortgagees, and did not belong to the assignees as assets. All these grounds were clearly taken in the petitioner's exceptions to the master's report, (p. 27). And it was in passing upon these controverted questions of fact, that the court found the right of possession to be in the receivers. They found this before the assignees had appeared and submitted, and they found and declared, as this court must find, that this decision upon the facts, made the questions of law sought to be

raised by Farwell, — notably by his amended answer — quite immaterial. And this finding of a court of the vicinage, upon controverted questions of fact and disputed veracity of witnesses, will not be re-examined by this tribunal.

If it should be, the same result would be arrived at.

For there is not only in favor of the receivers the testimony of an independent and reliable witness, and the written statements of party himself, but there are against him the inferences drawn from his relation to the corporation. If it were conceded (as we by no means concede) that Farwell paid the Spragues with his own money and intended to hold the coupons until he was repaid, and that he never was repaid by an actual transfer of cash, yet these facts remain: he was bound to protect the interest of the corporation because as a managing officer he occupied a fiduciary relation to it; he became and was trustee for the corporation of 7349 shares of stock confessedly laid aside for the purpose of paying this debt (if not already paid); he afterwards, when it was worth more than the debt, transferred it to himself by a transfer which we say was an absolute transfer (and therefore a payment) because it no longer disclosed the corporation as *certui qui trust* (pp. 250–1) and it thus remained without anything to show any interest of the corporation in it for eighteen months, until the corporation became bankrupt, and it fell in value from $200,000 to nearly nothing: then suddenly he manifested an election to treat this as collateral and charge the loss to the corporation. A court of equity which, from public policy, will not permit a trustee to deal with the trust estate even as a stranger might, will never take this convenient view of the transaction, nor would it avail him if they did; for bearing in mind the rule which is applied where the holder of collateral without the express consent of the debtor, retains the collateral long after maturity of the debt, until, by his unreasonable delay the value is wholly lost, (*Howard* v *Ames*, 3 Met. 308,) and applying this to the case where the delaying creditor is trustee for and representative of the debtor in the very transaction in question, it is obvious that a court of equity must treat the case as if the property had been sold and the debt discharged at its due time.

Now when the court, resting on facts which cannot be disputed, takes this view of the transaction and considers that the corporation before its bankruptcy, by the use of these 7349 shares of stock had paid the debt to Farwell, and acquired these coupons, which by its contract with the H. P. & F. R. R. it was bound to pay and cancel for the benefit of H. P. & F. bondholders, and which, by the covenants in the Berdell mortgage it could not set up or treat as assets or permit to be set up against the Berdell mortgage bond-

holders, and which by the terms of its charter it could not sell or assign and therefore could not treat as assets, it must be held as matter of law that the coupons in its hands became at once paid, dead, and cancelled. (*McCabe* v *Swap*, 14 Allen, 188.) And therefore they were not assets which belonged to the assignees, but the court, in this mortgagee's proceeding, might call them in for the mortgagee's protection.

This is exactly what the state court found by its rescript, for Farwell could not have been held to be without right or title to them unless upon the ground that the corporation, by transfers of its cash or property, had acquired them,—or else that they were paid and dead in the Spagues' hands.

And in addition to what that court had before it when the rescript went down, it had at the time of the final decree, and this court now has, the written confession of the assignees. This is a formal admission on their part of every fact necessary to sustain the decree, and will sustain the suggestion that for a consideration the assignees have quit-claimed the coupons to the mortgagees.

(4) But as matter of law, this court cannot re-examine these questions of fact. The facts *may* have been such that no ground was afforded for raising the questions of law involved in the amended answer. If they were so, then the federal question attempted to be raised, was not raised and was not decided, and there is nothing to warrant the issue of this writ of error. Now the state court expressly decided that as matter of *fact* the defence set up was not made out, and that no question of law was involved or decided. And this court therefore cannot take cognizance of the matter, unless it shall first reverse the decision of the state court upon this question of fact. Section 22 of the act of 1789, (R. S. § 1011), expressly forbids this in writs of error to the circuit court, and the writ in this case is governed by the same rules, (Act of 1867, § 2; R. S. §).

Of course this would not apply where the state court by a dishonest trick sought to protect its decrees, for this court will always look far enough to see what the real decision was.

IV.

It will not be denied that receivers in possession of property under a bill to foreclose a mortgage on it, cannot be disturbed by assignees appointed under a subsequent adjudication in bankruptcy. And it will not be denied also that under the decree of the state

raised by Farwell, — notably by his amended answer — quite immaterial. And this finding of a court of the vicinage, upon controverted questions of fact and disputed veracity of witnesses, will not be re-examined by this tribunal.

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This is exactly what the state court found by its rescript, for Farwell could not have been held to be without right or title to them unless upon the ground that the corporation, by transfers of its cash or property, had acquired them,—or else that they were paid and dead in the Spagues' hands.

And in addition to what that court had before it when the rescript went down, it had at the time of the final decree, and this court now has, the written confession of the assignees. This is a formal admission on their part of every fact necessary to sustain the decree, and will sustain the suggestion that for a consideration the assignees have quit-claimed the coupons to the mortgagees.

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IV.

It will not be denied that receivers in possession of property under a bill to foreclose a mortgage on it, cannot be disturbed by assignees appointed under a subsequent adjudication in bankruptcy.* And it will not be denied also that, under the decree of the state court of Aug. 2, 1870, (supp. rec., p. 20) and before the adjudication in bankruptcy they were as much in possession of the rail-

* Marshall v. Knox, 16 Wall. 551

road as the corporation had ever been. And we thereupon submit that as against one who was an officer of the corporation and a defendant named in the bill, and within the jurisdiction of the court and against whom the bill had been taken for confessed, they must be deemed to be in possession of all the property of the corporation in his hands. Buck v. Colbath 3 Wall. 334

But in truth these coupons were not property. They at most evidenced his claim on or against the railroad on which they were secured, and the proceeding of the receivers was not to acquire property but to protect against unfounded claims the property which they held already under the mortgage for the purpose of foreclosing, and with relation to which the coupons were merely muniments of title.

And therefore the cases which turn on the question of possession by receivers before adjudication in bankruptcy apply in our favor.

V.

This is distinctly not an original suit, but an auxiliary proceeding by petition in the Ellis case, brought by the receivers against a defendant in that suit, to compel him to obey the decree already made against him and all other defendants on August 2, 1870. (See writ of error, p. 1; title of petition, p. 3; decree, p. 31.) And the undeniable jurisdiction to entertain that original suit and make that decree in it, carries with it, *as against all parties to that suit*, the power to enforce that decree by a process for contempt or any other appropriate proceeding.

> Dunlap *v.* Stetson, 4 Mas., 349.
> Clarke *v.* Matthewson, 12 Pet., 164.

And with this power no federal court can interfere.

VI.

But if the court below erred in the decision of the federal question; and if the facts found by it did not render that question immaterial; and if the decree below was wrong and cannot be sustained, what course is now to be taken?

These coupons belonged to the R. R. corporation; Farwell had no right whatever to them, and the existing decree restrains him from disposing of them, (rec. p. 32.) The only question that he can pretend to raise is whether he shall surrender them to the receivers or to the assignees. If the decree below be set aside, and the petition dismissed, Farwell will be at liberty to dispose of them at once. The most that will be done by this court, there-

fore, will be to remand the cause to the court below, according to the seventh proposition in *Murdock* v. *Memphis*, (20 Wall. 636,) and in that court, the assignees, under the abundant authority to use the state courts given by the bankrupt act, may intervene and petition to have the coupons delivered to them without the expense of another litigation.

And when they have received them they may deliver them to the mortgagees to whom they belong.

GEORGE W. LONG, ET AL., PLAINTIFFS IN ERROR,

vs.

JAMES W. CONVERSE, ET AL., RECEIVERS.

No. 32.

After the receivers had filed their petition against Farwell, they discovered that he had transferred a part of the coupons to the firm of Long & Co. On September 20, 1871, they therefore filed a similar petition against the members of that firm. To that petition original and amended answers were filed, to the same effect as those of Farwell, except that Long & Co. added the allegations that they were *bona-fide* purchasers from Farwell for value and without notice. The evidence was taken in both cases, and they were heard and disposed of together. The rescript in this case was as follows:

"It is found by the court, as a matter of fact, that the defendants took the interest coupons now sought to be recovered of them, under circumstances which preclude them from claiming the right of holders for value in good faith, and that as against the petitioners the respondents acquired no better title to the coupons in question than Farwell himself had." (Suppl. Rec., p. 70.)

The coupons in this case of Long were not coupons of the H. P. and F. R. R. Under an agreement with the city of Providence (a similar arrangement had been made with the city of Hartford) in the nature of a loan of credit to the railroad, the city delivered its own bonds to the R. R. Co., and took H. P. & F. bonds in exchange; but the H. P. & F. must pay the interest, and either pay the city bonds at maturity, or put the city in funds by paying its own bonds. And upon production and surrender by the railroad company of the city bonds or city coupons, it was to receive from the city an equivalent in its own mortgage bonds and coupons; while for every city coupon which the city was compelled to pay to strangers, the city held and would enforce the corresponding amount of railroad mortgage coupons. As between the H. P. & F. R. R. Co., or its successors the B. H. & E. R. R. Co., and these plaintiffs, the Providence city coupons stand on the same footing as the railroad coupons; they are debts of the H. P. & F. R., and secured by its mortgage, and which it and the B. H. & E. R. Co. are bound to pay, both because they have so promised, and there-

cause in effect, under the mortgage, their amount constitutes a lien on the property. See the city bond and coupon exhibit y, rec. p. 253, the contract between R. R. Co. & city exhibit x, p. 251; the R. R. mortgages, u, suppl. rec, p. 42, *ib.* p. 47, *ib.* p. 52; records and testimony of Parkhurst, rec. p. 126, and description of coupons, (500 for $30.00, each due July 1, 1857), petition, p. 5, and production of the coupons themselves, p. 150.

And the $15,000 of coupons held by George W. Long & Co. were these city of Providence coupons.

Thus both as to the character of the coupons, and as to the position of the parties, this case cannot be distinguished from Farwell's case, No. 31. And the state court so decided.

Respectfully submitted by

BROOKS, BALL & STOREY,
JAMES J. STORROW,

for Converse, et al.,
Defendants in Error.

BOSTON, Sept., 1875.

Nov 405

Judge Davis

Supreme Court of the United States.

LONG *et al.*
vs.
CONVERSE *et al.*
No. 32.

Supplemental Brief for Defendants in Error.

The decree of August 2, 1870, which appointed receivers, enjoined "the defendants and each of them" "from interfering in any manner with the property * * * and papers" of the corporation, (p. 23,) and Farwell was one of those defendants. Their petition in this Long case alleged (p. 4) that Farwell had the coupons in his possession at the time of the decree; that since then he had transferred them to Long & Co.; that both he and Long & Co. at the time of such transfer knew of the decree and injunction; and that Long & Co. did not take them in good faith, (p. 6.) The answer admitted (p. 8) that the transfer to them was made after the decree, and Mr. Long testified that it was in November, 1870, (p. 149.) Mr. Long and Mr. Watson, his partner, both admit, in effect, notice of the decree and a general knowledge of the proceedings in the Ellis suit. (See bottom of page 229 and bottom of page 231.)

During the hearing before the master, and while Long was under examination, his counsel actually produced the package of Providence coupons in question; consequently, it was not until after this that Long & Co. converted the coupons into money. The only thing in the record to show when and how they converted them is the decree to which this writ of error issued, and from that decree (p. 33) it would appear that the conversion was on February 20, 1872.

This was while the cause was held under advisement by the court, for the master's report was dated November 15, 1871, (p. 27,) and the rescript is dated April 3, 1872. (Supp. Rec., p. 70.)

Upon this and other evidence the court found, as matter of fact, that Long & Co. stood in no better position than Farwell did. It is enough for us that this finding involves no federal question. But it was obviously justified by the evidence, and obviously, also, the court were justified in directing Long & Co., by the decree of May 5, 1873, (p. 33,) to deliver to the receivers, instead of the coupons, the money into which they had converted them.

If it be suggested that any proceedings against the city of Providence required a different decree in the Massachusetts court, the answer is, first, that the record does not contain those proceedings, so that their effect can be judged of; second, that no error in that respect is assigned; and, third, that no federal question is involved in the matter.

We have already shown in our brief that the Providence city bonds and coupons were issued to the H. P. & F. R. R. Co. in exchange for its own mortgage bonds, under such an arrangement that the possession of these Providence coupons enabled the H. P. & F. R. R. Co. or its successor, the B. H. &. E. R. R. Co., to acquire by exchange an equal number of the H. P. & F. mortgage bonds and coupons; and that the H. P. & F. R. R. Co. or its said successor was under obligation to pay them or have them exchanged; and that therefore, as between the railroad company and its mortgagees and other parties, the city coupons stood on the same footing as the mortgage coupons. Perhaps the most compact statement of this matter is found in the city ordinance under which the issue was made. (Exhibit T′, Suppl. Rec., pp. 40–42.)

Respectfully submitted by

B. F. Brooks,
J. J. Storrow,
For Converse et al., Defendants in Error.

Nov. 4, 1875.

Supreme Court of the United States.

Supreme Court of the United States.

October Term, 1875. Nos. 31, 32.

FARWELL, IN ERROR, *vs.* CONVERSE ET AL.

AND

LONG ET AL., IN ERROR, *vs.* THE SAME.

Supplemental Brief on behalf of Plaintiffs in Error.

The facts upon which the single question in these cases arises are as follows:

The Boston, Hartford & Erie Railroad had mortgaged their road and its franchises, and the greater part of their property, for *twenty million* dollars.

They had become insolvent.

Ellis and others, bondholders under that mortgage, on the 2d of August, 1870, filed a bill in equity in the supreme judicial court of Massachusetts, in behalf of themselves and the other bondholders, against the trustees and mortgagees and the directors of the road, and the Road, for the purpose of foreclosure of the mortgage, alleging that the mortgagees and trustees mismanaged their trust, and under the management of the directors the road had become insolvent, so that there was danger of losing their security, praying for an injunction, and for the appoint-

ment of a receiver to take possession of the mortgaged property only.

Supplemental Record, No. 31, p. 10.

Thereupon a subpœna was issued to the defendants commanding them to appear at time and place therein named, "to show cause, if any you have, why an injunction should "not issue as prayed for in said bill of complainant, and "why a receiver should not be appointed as therein prayed." Afterwards a decree was entered taking the bill *pro confesso* against all the defendants except the Corporation.

Supplemental Record, p. 25.

Afterwards, on the 20th of August, 1870, a decree was entered appointing the defendants in error (with others) receivers, "with full power and authority to take possession "of all and singular the railway," &c.; and "all and singu- "lar, the other property, real and personal, corporeal and "incorporeal, of said Boston, Hartford & Erie Railroad "Company, and the earnings and income thereof and there- "from, including all the moneys, credits, choses in action, "evidences of debt, books, deeds, leases, contracts, papers, "and vouchers of said company, by whatever name the "same shall be known and designated, and the same to "demand and collect by suit or otherwise."

Supplemental Record, p. 21.

On the 21st of October, 1870, a petition *in invitum* was filed in the United States district court for the district of Massachusetts to have the said corporation declared bankrupt, and such proceedings were had, that on the 1st of March, 1871, by a decree of said court, said corporation was adjudged bankrupt, and on the 18th March, 1871, a deed of assignment was duly made of the property of said bankrupt.

On the 2d of May, 1871, the receivers filed their petition in said supreme court in said case of foreclosure, and among other things prayed, for reasons therein stated, that Farwell, the plaintiff in error, should deliver to them certain coupons of the bonds of the Hartford, Providence and Fishkill Railroad, and of the city of Providence, therein set forth, which, as the receivers claimed, "were and still "are the property of said Boston, Hartford and Erie Rail-"road, and are a part and portion of its property, of which "they, the said receivers, were, in and by said decree, "ordered to take possession," and for an injunction against Farwell from disposing of said coupons. Whereupon the court made an order returnable on the 6th of said May, to show cause why an injunction *pendente lite*, should not issue, and ordered a temporary injunction, but granted no writ of subpœna to Farwell, which, indeed, was not prayed for in the petition.

Record, p. 6.

In obedience to this summary order, the defendant, Farwell, on the 10th May, filed his answer, which was afterwards amended before the hearing, setting forth, among other defences, the proceedings in bankruptcy above recited, and averring that said property had passed to the assignees, and that he ought not to be held by said court to deliver the same to the receivers, but to the assignees, who were alone entitled to sue for the same. The cause being referred to a master, Farwell made the same objection before him. (Record, p. 33.) At a final hearing, upon the report of the master, and exceptions thereto, the court ordered a "decree for the receivers upon the evidence "reported," as prayed for, on the 3d of April, 1872. (See Record, p. 70.) And on the 5th of May, 1873, a final decree was entered by said supreme court of the State, upon which the error was brought to this court.

Record, p. 31.

No. 32. Long *v.* The Receivers.

Precisely the same proceedings were had, except the petition was filed September 20, 1871, although the plaintiffs in error were not parties in the original suit for foreclosure, or, as appears by the record brought before the court, upon any subpœna whatever.

The case of Long & Company differs from that of Farwell only in these: That after the appointment of receivers, Farwell had delivered the five hundred coupons of the bonds of the city of Providence mentioned in the receiver's petition against Farwell to Long & Company, who, as the Master finds, had received them without notice of any adverse claim, and "in good faith, as collateral security, to be "collected by them and applied in payment of his debts," which were certain sums of money due from Farwell to Long & Company, and in consideration of delay in payment of their debt.

Record, Long's case, p. 24.

Another distinguishing feature in Long's case is that meantime Long & Company had brought suit upon said coupons, against the city of Providence, before the circuit court of the United States in Rhode Island, in which the same claim was set up in defence that is the foundation of their claim in the petition of the receivers, and judgment had been entered in favor of Long & Company against the city of Providence therefor, execution had issued, and they had collected the same, and the final decree of the State court, upon which error was brought, orders execution against Long & Company for the amount of their judgment against the city of Providence.

See Record, p. 33.

These cases raise but a single Federal question, but, in

the judgment of the plaintiffs in error, of the gravest importance, which may be stated thus:

Does an assignment under the bankrupt law of the United States convey to the assignees all property and rights of property of the bankrupt, to be administered according to the laws of the United States in its courts, or are such portions of the property of the bankrupt as are in contest before the State courts which are engaged in winding up his affairs excepted from the operation of the deed of assignment under the bankrupt law?

The Bankrupt act of March 2, 1867, in force at the date of these proceedings, provides, section 14, that "the regis- "ter shall, by an instrument under his hand, assign and "convey to the assignee all the estate, real and personal, "of the bankrupt, with all his deeds, books, and papers "relating thereto, and such assignment shall relate "back to the commencement of said proceedings in "bankruptcy, and thereupon by operation of law the "title to all such property and estate, both real and "personal, shall vest in said assignee," (with certain exceptions for the benefit of the bankrupt;) that "all rights "in equity, choses in action, patents and patent rights and "copyrights; all debts due him or any person for his use, "and all liens and securities therefor; and all his rights "of action for property or estate, real or personal, and for "any cause of action which the bankrupt had against any "person arising from contract, or from the unlawful taking "or detention, or of injury to the property of the bank- "rupt, and all his rights of redeeming such property or "estate." Again, that "no person shall be entitled, as "against the assignee, to withhold from him possession of "any books of account of the bankrupt, or claim any lien "thereon."

Again, section 15 provides "that the assignee shall

"demand and receive from any and all persons holding "the same all the estate assigned, or intended to be "assigned under the provisions of this act."

Again, section 20 provides that "if the value of the "property exceeds the sum for which it is so held as "security, the assignee may release to the creditor the "bankrupt's right of redemption therein on receiving such "excess; or he may sell the property, subject to the "claim of the creditor thereon."

Again, section first provides "that the jurisdiction of "the District Court shall extend to all cases and controver- "sies, * * * to the ascertainment and liquidation of "the liens and other specific claims thereon; to the "adjustment of the various priorities and conflicting "interests of all parties; and to the marshalling and dis- "position of the different funds and assets, so as to secure "the rights of all parties and due distribution of the "assets among all the creditors."

Grinwold v. Platt 9 Mit. 16, 22
Shawhan v. Wherrit 7. How, 627. 634

Is not the title in the assignee a paramount title if the matter here in dispute is the property of the bankrupt unlawfully detained from him?

We do not claim that the jurisdiction of the Federal courts is paramount upon *all* matters pertaining to bankruptcy, but that it is paramount "in the ascertainment and "liquidation of the liens and other specific claims thereon, "and the marshalling and disposition of different funds."

Are the coupons the property of the bankrupt?

The allegations of the petition are, that "they are a part "and portion of the property of the Railroad Company,"

and that "they are secreted by said Farwell so that they "cannot be replevied."

Record, p. 5.

The defendants in error are, therefore, estopped by their own averments to say that these coupons are *not the property of the bankrupt.*

If it be claimed that it is at the election of the assignee in what court he will pursue this property, we answer that the property does not pass to him at his election, but is absolutely vested in him by law; therefore there can be title in no other upon which a suit for it can be maintained.

We submit, by the deed of assignment, *eo instanti*, that the receivers were divested of all right either to the possession or title of this property.

But it is claimed that courts of concurrent jurisdiction will not interfere with property over which either has assumed jurisdiction and taken into possession.

The first question we raise is not a question of *jurisdiction* in the court, but a question of *title* in the suitor under a law of the United States.

But upon the jurisdiction, we insist that the jurisdiction to administer the property of the bankrupt to adjust the rights of his creditors is not concurrent between the United States courts and the State courts.

By the very language of the statute just quoted, "the "ascertainment and liquidations of liens and the adjust- "ment of various priorities and conflicting interests of all "parties" in a bankrupt's estate is exclusively in the courts of the United States. In the language of the Court in

Buck *v.* Colbath, (3 Wallace, pp. 334, 345,) "in examining "into the exclusive character of the jurisdiction of such "cases, we must have regard to the nature of the reme- "dies, the character of the relief sought, and the identity "of parties in different suits."

Again, we say that the doctrine of non-interference by courts only applies in cases where the property has actually come into the *possession* of the court first taking jurisdiction.

This is not the case at bar. The very object and prayer of the petitioners is to get possession of that which they had not possession, and alleged to be so secreted that they cannot get the possession.

Again, there is another reason why this property was not within the jurisdiction of the State court.

If this Court should hold that the decree of the State court had power to pass this property to the receiver, as against the assignee, we then submit that the property did not pass to the receiver under the decree.

First. Because the bill in equity of Ellis *et al.* was to foreclose a mortgage only, and prayed for a receiver of the mortgaged property only; and the bill was confessed by Farwell to that extent and no more.

The decree of the court covered all the property of the debtor, and put it all into the hands of the receivers, whether mortgaged or not. (Supp. Record, No. 31, p. 30.) This was *ultra vires.*

If this decree can be sustained against the Bankrupt law, then there is nothing left to the general creditor to be administered upon in bankruptcy.

If it is asserted that these coupons were mortgaged property, then the questions of the liens thereon was to be decided by the United States court, and title thereto passed to the assignee for that purpose.

Again, in Long's case, he was never party, in any way, to the suit for foreclosure. Without any bill brought against him, upon an ancillary petition only, he is brought before a court by which the proceeds of a judgment rendered by a circuit court of the United States are taken from him as the property of a bankrupt corporation after that property had passed to its assignee in bankruptcy.

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Of Counsel.

Marshall v Knox 16 Wall. 551. 556
Smith v Mason 14 " 419
In re Bonesteel 3 N BR. 509